

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

CIVIL DIVISION

SARAH SMITH, as personal)
representative of the Estate of Dakota)
Smith, Deceased,)
)
Plaintiff,)
)
v.)
)
HOMER SIMPSON,)
)
Defendant.)
_____)

Case No. 2001-5555

Prepared by:

**Judge Jerry R. Parker
Second District Court of Appeal
801 Twiggs Street
Suite 600
Tampa, FL 33602**

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-and-
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**SARAH SMITH, as personal
representative of the Estate of
Dakota Smith, Deceased,**

v.

HOMER SIMPSON,

Table of Contents

| | |
|--|----|
| Statement of the Case and Stipulations ----- | 1 |
| Witness List ----- | 9 |
| Complaint ----- | 10 |
| Answer and Affirmative Defense ----- | 14 |
| Depositions: | |
| Tracy Leduc ----- | 17 |
| Sydney Lloyd ----- | 22 |
| Homer Simpson ----- | 27 |
| Jane Simpson ----- | 33 |
| Exhibits: | |
| Exhibit A (Leduc street drawing) ----- | 37 |
| Exhibit B (Leduc property drawing) ----- | 38 |
| Exhibit C (Gun) ----- | 39 |
| Exhibit D (Screwdriver) ----- | 40 |
| Exhibit E (Contract for purchase) ----- | 41 |
| Exhibit F (May 9, 2001, letter) ----- | 42 |
| Exhibit G (June 6, 2001, letter) ----- | 43 |
| Exhibit H (July 6, 2001, letter) ----- | 44 |
| Exhibit I (August 1, 2001, letter) ----- | 45 |
| Exhibit J (Activity log) ----- | 46 |
| Exhibit K (Homer Simpson drawing) ----- | 47 |
| Preliminary Jury Instructions ----- | 48 |
| Final Jury Instructions ----- | 51 |
| Verdict Form ----- | 56 |

STATEMENT OF THE CASE

Sarah Smith, plaintiff and personal representative of the Estate of Dakota Smith, the deceased, has filed a wrongful death complaint against Homer Simpson. The complaint alleges that the plaintiff is the spouse of the deceased and that Homer Simpson shot and killed the deceased without provocation. The evidence will show that the deceased was a vehicle repossession specialist for Lone Star Auto Sales, Inc., and was attempting to repossess a vehicle from the residence of Jane and Homer Simpson because of delinquent car payments required to be paid pursuant to a purchase contract. The evidence will show that Homer Simpson shot and killed the deceased while the deceased stood next to the vehicle about to be repossessed.

The defendant has filed an answer denying the material allegations in the complaint and raising affirmative defenses of assumption of risk, contributory negligence, and justifiable use of force.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Civil Procedure and Federal Rules of Evidence apply.
2. This case shall be tried on liability only. Should the plaintiff prevail on liability, the question of damages, including punitive damages, shall be reserved for the jury to be heard with additional evidence and additional jury instructions on a later date.

3. All witnesses called to testify who have in depositions identified the defendant, other individuals, or tangible evidence can, if asked, identify the same at trial.

4. Each witness who gave a deposition did agree under oath at the outset of his/her deposition to give a full and complete description of what occurred and to correct the deposition for inaccuracies and completeness before signing the deposition.

5. All depositions were signed under oath.

6. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on the deposition does not comport with signatures or initials located on an exhibit.

7. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses or the defendant that would bolster or detract from their credibility.

8. This competition does not permit a listed witness or the defendant, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that invented individual.

9. "Beyond the record" shall not be entertained as an objection. Rather, teams shall utilize cross-examination as to inferences from material facts. Pursuant to National Rules VII(4)(C), and (D) and VIII(5), any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in Rule VIII(5).

10. The State and the defendant must call the two witnesses listed on their respective witness list.

11. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

12. It is stipulated that no one shall attempt to contact the problem drafter, Judge Parker, about this problem. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

13. 2002 should be the current year in which this case comes to trial.

14. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the plaintiff shall have four minutes to present any pretrial motions; (2) the defense shall have four minutes to respond to the plaintiff's motion(s); (3) the defense shall have four minutes to present any pretrial motions; and (4) the plaintiff shall have four minutes to respond to the defense's motion(s).

15. This competition does permit teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions are permitted to the provided jury instructions.

16. No team member is permitted to question any witness or argue to the jury the absence at the trial of the victim's clothing, the contents of the clothing, or the

absence of photographs or videotape recordings obtained depicting the front yard, the side yard, the residence, and the street in front of the residence of Jane and Homer Simpson.

Substantive Matters

1. The plaintiff and the defendant stipulate that Sarah Smith is the legal wife of Dakota Smith and the proper party to file this action in the circuit court.

2. In the State of Lone Star, actions at law in circuit court require that the controversy exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees. Further, the defendant stipulates that the reasonable EMS services, transportation, funeral, and burial expenses incurred by the plaintiff exceed \$15,000.

3. The plaintiff and the defense agree that the jury may be informed of the following, if the plaintiff or the defense so requests: (a) on August 13, 2001, Joye Walford, the Travis County Medical Examiner, performed an autopsy on Dakota Smith, the deceased; (b) certain findings were made by the examiner; (c) the cause of death was two shots to the chest, both puncturing the heart; (d) the deceased's time of death was between 1:45 a.m., August 13, 2001, and 3:00 a.m. on August 13, 2001; (e) the lack of powder and stipling on the deceased's clothing confirms that the distance between the barrel of the firearm and the deceased at the time the deceased was shot was greater than three feet; (f) the deceased's blood type was O positive; (g) a

chemical analysis of the deceased's blood reflected a .10 blood alcohol reading and no drugs in his system; (h) the deceased was six feet, four inches tall, weighed approximately 280 pounds, and appeared to be thirty-five to forty-five years of age; and (i) the body was dressed in black pants, a black T-shirt, a black baseball cap, and dark western boots. The contents of the pockets in the pants were as follows: seven one-dollar bills in the front right pants pocket and one comb in the left rear pants pocket.

4. Exhibit C, photographs of the firearm, and Exhibit D, the photograph of the screwdriver, shall be treated as if each authentic tangible object were present in the courtroom.

5. Lone Star Statutes (1998) provide the following:

90.810 Trespass on property other than structure or conveyance.--

(1) Whoever, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance as to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing or cultivation, commits the offense of trespass on property other than a structure or conveyance.

(2)(a) Trespass on property other than a structure or conveyance is a misdemeanor of the first degree.

(b) If the offender defies an order to leave, personally communicated to him by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act which exposes animals, crops, or other property to waste, destruction, or freedom, or trespasses on property other than a structure or conveyance, he is guilty of a misdemeanor of the first degree.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance,

he is guilty of a felony of the third degree. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he reasonably believes that a violation of this paragraph has been or is being committed, and he reasonably believes that the person to be taken into custody and detained has committed or is committing such violation. In the event a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention by such person, if done in compliance with the requirements of this paragraph, shall not render such person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

60.776 Deadly force.--"Deadly force" means force which is likely to cause death or great bodily harm and includes, but is not limited to:

- (1) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
- (2) The firing of a firearm at a vehicle in which the person to be arrested is riding.

21.776 Use of force in defense of person.--A person is justified in the use of force, except deadly force, against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of deadly force only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony.

487.011 Assault.--An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

487.021 Aggravated assault.--

(1) An "aggravated assault" is an assault:

- (a) With a deadly weapon without intent to kill; or
- (b) With an intent to commit a felony.

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable by a term in the state penitentiary not to exceed 5 years and/or a fine of \$5,000.

80.775 Classes and definitions of offenses.--

When used in the laws of this state:

(1) The term "felony" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" shall include state correctional facilities. A person shall be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

(2) The term "misdemeanor" shall mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of 1 year. The term "misdemeanor" shall not mean a conviction for any noncriminal traffic violation of any provision of chapter 316 or any municipal or county ordinance.

80.776 Forcible felony.--"Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

394.6101 Repossessions.--"Repossession" means the recovery of a motor vehicle by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.

976.503 Party's right to take possession pursuant to contract.--Unless otherwise agreed, a party to

a written contract which provides for a right for that party to repossess a motor vehicle upon the default of the other party to abide by the terms of the contract, has the right to take possession of the motor vehicle listed in the contract. In taking possession, the party may proceed without judicial process. So long as the person repossessing the motor vehicle can repossess the vehicle without entry of any building or residence, and can enter any fenced enclosure without damage to the enclosure, the person repossessing the motor vehicle may enter upon the real property of another and repossess a vehicle at any time, day or night, so long as this can be done without breach of the peace.

6. In Tuttle v. Stacy, 440 Lone Star 2d 110 (Lone Star 1983), the Lone Star Supreme Court stated:

We find no discernible basis analytically or historically to maintain a distinction between the affirmative defense of contributory negligence and assumption of risk. Therefore, we hold that the affirmative defense of implied assumption of risk is merged into the defense of contributory negligence and the principles of comparative negligence.

WITNESS LIST

Witnesses for the Plaintiff:

1. Tracy Leduc *
2. Sydney Lloyd *

Witnesses for the Defense:

1. Homer Simpson **
2. Jane Simpson ***

Each team must call witnesses 1 and 2 listed for their respective party.

* This witness may be either a male or female.

** This person must be a male.

*** This person must be a female.

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SARAH SMITH, as personal)
representative of the Estate of Dakota)
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Plaintiff,)
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v.)
)
HOMER SIMPSON,)
)
Defendant.)
_____)

Case No. 2001-5555

COMPLAINT

Plaintiff, Sarah Smith, as personal representative of the Estate of Dakota Smith, deceased, sues Homer Simpson, and alleges:

GENERAL ALLEGATIONS

1. This is an action for damages that exceed \$15,000.
2. Plaintiff is the duly appointed, qualified, and acting personal representative of the estate of Dakota Smith.
3. The potential beneficiaries of the recovery in this action and the relationship of each to the declarant are:

Sarah Smith -- Spouse

Cherokee Smith -- Son

4. Dakota Smith, deceased, was the legal spouse of the plaintiff and the natural father of Cherokee Smith.

5. Dakota Smith, deceased, died intestate in Travis County, State of Lone Star, on August 13, 2001.

6. Decedent, Dakota Smith, is survived by his spouse, Sarah Smith, and his son, Cherokee Smith.

7. Defendant, Homer Simpson, is a resident of Travis County, State of Lone Star, and is sui juris.

COUNT I

8. Plaintiff adopts and reaffirms the facts set forth in paragraphs 1 through 7 of his complaint.

9. On August 13, 2001, the deceased, Dakota Smith, approached the residence of Defendant, Homer Simpson. Defendant, Homer Simpson, without provocation, pointed a firearm at the deceased, Dakota Smith, and fired two bullets into the deceased, Dakota Smith.

10. The carelessness and negligence of Defendant, Homer Simpson, as set forth above, was the direct and proximate cause of the serious personal injuries sustained by decedent, Dakota Smith, and directly and proximately resulted in his death.

11. As a direct and proximate result of the negligence of Defendant, Homer Simpson, the estate of Dakota Smith has incurred medical and funeral expenses and has suffered the loss of net accumulation that would have accrued had the decedent, Dakota Smith, survived and lived his normal life expectancy.

12. As a direct and proximate result of the carelessness and negligence of Defendant Homer Simpson, Plaintiff Sarah Smith has sustained the loss of her husband's support and services from the date of the decedent's injury to his death, as well as the future loss of support and services from the date of his death. Plaintiff, Sarah Smith, also has sustained mental pain and suffering from the date of decedent's injury. These damages are permanent and continuing in nature.

COUNT II

13. Plaintiff adopts and reaffirms the facts set forth in paragraphs 1 through 7, 9, 10, 11, and 12.

14. The actions of Defendant, Homer Simpson, on August 13, 2001, in shooting the deceased, Dakota Smith, were intentional and demonstrated a clear intent to willfully, wantonly, and maliciously injure the deceased, Dakota Smith, causing Dakota Smith's death.

15. The actions of Defendant, Homer Simpson, on August 13, 2001, in causing the death of Dakota Smith, constitute a gross disregard for the safety of the deceased, Dakota Smith.

WHEREFORE, plaintiff demands judgment for damages, including punitive damages, against defendant.

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(512) 452-9300
Lone Star Bar 0007007007
Attorney for Plaintiff

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Case No. 2001-5555

ANSWER AND DEFENSES TO COMPLAINT

The defendant, Homer Simpson, by and through his undersigned attorney, files this, his Answer and Defenses to the Complaint filed by the plaintiff, and states as follows:

1. Admit jurisdiction.
2. Admit paragraph 2.
3. Deny paragraph 3 and demand strict proof thereof.
4. Deny paragraph 4 and demand strict proof thereof.
5. Deny paragraph 5 and demand strict proof thereof.
6. Deny paragraph 6 and demand strict proof thereof.

7. Admit paragraph 7.
8. Paragraph 8 does not require an answer from the defendant.
9. Deny paragraph 9 and demand strict proof thereof.
10. Deny paragraph 10 and demand strict proof thereof.
11. Deny paragraph 11 and demand strict proof thereof.
12. Deny paragraph 12 and demand strict proof thereof.
13. Paragraph 13 does not require an answer from defendant.
14. Deny paragraph 14 and demand strict proof thereof.
15. Deny paragraph 15 and demand strict proof thereof.

AFFIRMATIVE DEFENSES

Defendant further asserts the following Affirmative Defenses.

1. That on the time, date, and place set forth in the complaint, the deceased, Dakota Smith, assumed the risk of injury by creating a dangerous situation in approaching a private residence in dark clothing and in making unusual movements, causing alarm to the Defendant.
2. That on the time, date, and place set forth in the complaint, the deceased, Dakota Smith, contributed to his own injuries by his clothing, his body movements, and carrying a weapon in approaching the residence of the Defendant, and attempting to attack the Defendant with the weapon.
3. Under the circumstances present at the time, date, and place set out in the complaint, the Defendant was justified in the use of force to protect himself and his property.

The undersigned certifies that a copy of this Answer and Defenses has been furnished to William Eleazer, by U. S. Mail, this ____ day of _____, 20____.

KIRK CRUTCHER
1400 University Plaza, Suite 600
Austin, State of Lone Star 78752
(512) 795-1500
Lone Star Bar 0008442211
Attorney for Defendant

DEPOSITION OF TRACY LEDUC

Q. Please state your name.

A. Tracy Leduc.

Q. Where are you employed?

A. I am a uniformed patrol officer with the City of Austin Police Department in Austin, State of Lone Star.

Q. How long have you been so employed?

A. Twelve years going on thirteen.

Q. What is your background education?

A. I graduated from the University of Oklahoma with a J.D. degree in law. However, I found that I didn't enjoy the practice of law. So I applied to the police force.

Q. What training have you had at the police department?

A. I completed sixteen weeks as a recruit at the police academy. I am required to attend two weeks of in-service training yearly at the police academy.

Q. What in-service courses have you completed at the academy?

A. Crime scene investigation, traffic control, issuing traffic citations, arrest techniques, traffic accident investigation, chemical spill control, riot control, firearms retraining every year, domestic violence investigation, child abuse investigation, organized crime investigation, organized theft ring investigation, missing persons investigation, and lifesaving training. I am sure there are more, but I can't remember all of them.

Q. Can you tell me where you were on Sunday, August 13, 2001, at 2 a.m.?

A. I was responding to the 2000 block of North Lamar in the City of Austin upon a report of gunshots.

Q. What happened when you arrived?

A. When I got to the 2000 block, I was flagged down by a Sydney Lloyd who was standing next to a car.

Q. What happened next?

- A. Lloyd told me that Lloyd was the manager of Lone Star Auto Sales and that Lloyd's employee was on the property of 2020 North Lamar to repossess a vehicle and that Lloyd had heard shots.
- Q. What did you do next?
- A. I immediately turned on my overhead emergency lights and drove into the driveway of 2020 North Lamar.
- Q. I now show you what has been marked Exhibit A. Can you identify it?
- A. Yes. It is my rough drawing of the 2000 block of North Lamar in the City of Austin that I made on August 13, 2001. It is not to scale.
- Q. I now show you what has been marked Exhibit B. Can you identify it?
- A. Yes. It is my drawing of a portion of the property located at 2020 North Lamar in the City of Austin. I drew it on August 13, 2001, and it is not to scale. I should tell you that both Exhibits A and B are rough because I was suffering from the flu on August 13, 2001. I was less than 100% that day.
- Q. Please tell me what happened when you arrived at 2020 North Lamar.
- A. I drove into the driveway with my emergency lights flashing. I radioed for back-up support. My headlights immediately shined upon an adult male lying next to a white Ford Taurus. I could see blood on the man's chest and on the concrete. I immediately radioed for an EMS squad and a crime scene unit from my department.
- Q. What happened next?
- A. I pulled out my weapon and flashlight and ran to the man. There was lots of blood, and I could get no pulse. I initiated CPR, but all that accomplished was getting blood all over my uniform. My back-up arrived in about two minutes and EMS was there in less than five minutes. EMS pronounced the man dead. I ordered that the body remain in place until the crime scene unit completed their work.
- Q. Where was Lloyd during this time?
- A. I don't know. I assume at Lloyd's vehicle. Until I had control, I didn't want any unnecessary people around.
- Q. When did you determine the identity of the dead man?
- A. Not until I could talk to Lloyd a second time. I then determined the dead man's name was Dakota Smith.
- Q. Going back to when EMS pronounced Smith dead, what did you do next?

- A. I activated the loudspeaker on my police cruiser and ordered the occupants of 2020 North Lamar to come out with their hands in plain view.
- Q. What happened next?
- A. A man and a woman came out of the residence with their hands up.
- Q. Do you now know who these people are?
- A. Yes. The man was Homer Simpson. The woman was his wife, Jane.
- Q. What did you do next?
- A. I directed them to my cruiser where I frisked both of them for weapons. I found none. I then read both of them their Miranda rights from a card I carry.
- Q. Did they agree to talk to you?
- A. Yes.
- Q. What did each tell you?
- A. Mr. Simpson said he was asleep and awoke to dogs barking. He said he looked outside and saw a man using a large screwdriver trying to break into his 1996 Ford Taurus parked in the driveway. Mr. Simpson said he got his firearm and went outside to the car to confront the man. Mr. Simpson said the man tried to attack him with the screwdriver and Mr. Simpson fired twice at very close range. Mr. Simpson said he ran back inside the house when he heard a car horn continually honk because he thought criminal accomplices might be close by.
- Q. What did Mrs. Simpson tell you?
- A. Not much. She remembered her husband getting out of bed. She next remembered hearing the front door open. She remembered hearing gunshots, and the front door reopen and close.
- Q. Did Mr. Simpson give you the firearm he used?
- A. Yes.
- Q. I now show you what is marked Exhibit C. Do you recognize it?
- A. Yes. It is the firearm I retrieved from Mr. Simpson on August 13, 2001. It is a Taurus .357 Magnum. It contains my initials and the date on the firearm.
- Q. From where did you retrieve the gun?
- A. I escorted Mr. and Mrs. Simpson back into their residence to get dressed, and the firearm was on the floor next to the front door. I took custody of the firearm with Mr. Simpson's permission and provided him a handwritten receipt for the weapon.

- Q. Did you find a screwdriver near the Ford Taurus?
- A. No. Neither I nor the crime scene technicians found one near the vehicle.
- Q. I now show you what is marked Exhibit D. Can you identify it?
- A. Yes. It is a screwdriver I found on the floor of the Simpson residence next to the firearm. Mr. Simpson claimed it was the screwdriver Smith used to attack him. I took custody of the screwdriver.
- Q. Did you search the residence at 2020 North Lamar?
- A. No.
- Q. Why?
- A. I requested permission to search, but Mr. Simpson refused to grant it.
- Q. What did you do while the Simpsons were getting dressed?
- A. I stood just inside the front door of the residence.
- Q. Did you make any observations?
- A. Yes.
- Q. What did you observe?
- A. In the middle of the room was a large metal tool box that had the top open. Inside was various wrenches, pliers, hammers, and screwdrivers. I noticed that the color of the handles on each of the screwdrivers matched each other and each matched the handle on Exhibit D. All of the handles were plastic and contained alternating colors of yellow and black.
- Q. What happened next?
- A. A homicide detective arrived and took over the investigation. He drove Mr. and Mrs. Simpson away. I stayed until the crime scene unit was finished and handled the removal of Smith's body. I completed my sketches, talked to Sydney Lloyd, and left.
- Q. Did you, any member of your department, or crime scene member ever find a set of car keys to the Ford Taurus?
- A. No.
- Q. Did you and the crime scene technicians make a thorough search for the keys in the front yard, side yard, under the Ford, and on the front porch?
- A. A very thorough search with generator-assisted floodlights.

- Q. Did you check Smith's hands to see if he was holding anything?
- A. Yes.
- Q. Was he holding anything?
- A. No.
- Q. Did you check the contents of his pockets?
- A. I watched the crime scene technicians do so.
- Q. What was found in the pockets?
- A. A small penlight, a comb, and a few dollar bills.
- Q. Did you ever try to open the door on the Ford Taurus?
- A. Yes. I tried all four doors and found them all locked.
- Q. Did you conduct any other investigation in this case?
- A. No. I wrote my reports, turned in the evidence that I had collected, and was called to testify in Mr. Simpson's criminal trial.
- Q. Did you check the criminal records for Homer Simpson, Jane Simpson, Sydney Lloyd, and Dakota Smith?
- A. None of them had a criminal record, although Dakota Smith had a pending aggravated battery charge alleging that he threatened a woman in a bar with a screwdriver after the woman pulled a knife. In fact, I arrested Dakota Smith on that charge on July 4, 2001. He confessed to me that he did threaten the woman with a screwdriver in self-defense. There was a pending motion to suppress his confession in that case alleging that I did not provide Smith his Miranda warnings. The case was set for trial in September 2001.

Tracy Leduc

Sworn to and subscribed before me
this ____ day of _____,
20__.

Notary Public

DEPOSITION OF SYDNEY LLOYD

Q. Please state your name.

A. Sydney Lloyd.

Q. What is your address?

A. My business address is Lone Star Auto Sales at 2015 Riverside Drive in Austin, State of Lone Star.

Q. Who owns that business?

A. It is a corporation, but I hold all of the shares and serve as president and general manager.

Q. I now show you what is marked Exhibit E. Do you recognize it?

A. Yes. It is a contract to purchase a vehicle from my corporation by Homer Simpson.

Q. Who negotiated the sale with Mr. Simpson?

A. I did.

Q. Did Mr. Simpson pay Lone Star Auto Sales \$1000 initially?

A. Yes.

Q. Did Mr. Simpson make any monthly payments?

A. Yes. He timely paid his monthly payment in full for February, March, and April 2001.

Q. I now show you what is marked Exhibit F. Do you recognize it?

A. Yes. It is a copy of the first letter of nonpayment I sent to Homer Simpson.

Q. Did Simpson ever make the May payment?

A. No.

Q. I now show you what is marked Exhibit G. Do you recognize it?

A. Yes. It is a copy of the letter I sent in June to Homer Simpson to notify him of the delinquent payments.

- Q. Did Simpson ever make the May or June payment?
- A. No.
- Q. I now show you what is marked Exhibit H. Do you recognize it?
- A. Yes. It is a copy of the letter I sent to Simpson in July to notify him of the delinquent payments.
- Q. Did Simpson ever make the May, June, or July payments?
- A. No.
- Q. I now show you what is marked Exhibit I. Do you recognize it?
- A. Yes. It is a copy of a letter that I sent on August 1, 2001.
- Q. What was the purpose of this letter?
- A. The same as all of the other letters. To get money due to the company. The letter also mentioned that we would repossess the car if Mr. Simpson failed to pay up.
- Q. Other than the letters, did you make any other attempt to notify Mr. Simpson of his failure to pay?
- A. Yes. I telephoned numerous times.
- Q. Did you ever reach Mr. Simpson by telephone?
- A. No. His wife answered once and said her husband wasn't at home.
- Q. Did you try to locate Mr. Simpson at his residence?
- A. Yes.
- Q. I now show you what is marked Exhibit J. Do you recognize it?
- A. Yes. It is my log book page from my office computer for Mr. Simpson's Taurus. I maintain a log book page for every vehicle sold by Lone Star Auto Sales until the vehicle is paid off.
- Q. Who made the entries on Exhibit J?
- A. I made every one.
- Q. When did you make the entries?
- A. I always put them in to the computer as soon as I have completed the telephone call, visited the residence, or signed the letter.

- Q. Turning to your August 10 entry, why did you have Dakota Smith with you?
- A. Dakota was one of the company employees. He was in charge of mechanic work, putting the vehicles in sale condition, and he was our best repossession man.
- Q. Your log indicates that you talked to Mr. Simpson. What happened?
- A. As we drove up, Mr. and Mrs. Simpson were about to get into the Taurus. I asked Mr. Simpson if I could speak to him. He stopped and Simpson, Dakota, and I stood next to his car.
- Q. Where was Mrs. Simpson?
- A. She walked up on the porch and sat in a chair.
- Q. What did you say to Mr. Simpson?
- A. I identified myself and Dakota. I advised him of the four months of payments he had not paid.
- Q. What was Mr. Simpson's response?
- A. He said he was having a tough time, but he would catch up the payments.
- Q. What did you say?
- A. I told him my patience was exhausted, and I had to repossess the car if I didn't get the payments that day.
- Q. What did Mr. Simpson say?
- A. He said he knew his rights and if I came around his home again bothering him or his wife someone was going to get hurt. Then he said to get off of his property.
- Q. What did you say?
- A. I told Mr. Simpson that if I didn't have \$2700 cash in my hand by 5 p.m. that day, I would repossess the car. Then Dakota and I left.
- Q. Did you threaten to break out the windows in Simpson's home?
- A. No. All I said was Dakota was our collection specialist and Simpson should not make Dakota angry.
- Q. Why would you say that?
- A. It always seemed to work with my slow-paying customers.

- Q Tell me what happened on August 13, 2001.
- A. I picked up Dakota Smith after midnight. I drove to the Simpson residence. I parked one-half block away on the opposite side of the street. I gave Dakota a set of keys to the Ford Taurus. Dakota quietly got out of my car and walked toward the Ford Taurus.
- Q. Could you see everything that happened?
- A. I could make out large objects and figures, but it was too dark to see faces.
- Q. What was Dakota Smith carrying when he left your car?
- A. I know he had the car keys and a small penlight. I didn't see anything else.
- Q. Was he carrying a screwdriver?
- A. I don't know. He had no need for one. He had keys to the car.
- Q. What did you see next?
- A. I saw Dakota walk up the Simpsons' driveway and go to the driver's side front door of the car. Then I heard a dog start barking. I saw the front door of the car open because the dome light came on. Something happened because I saw Dakota stop, look toward the front porch of the residence, and put both of his hands in the air. I then saw a figure walk down off the front porch. I heard two gunshots and saw two flashes from the gun. I saw Dakota fall. I started honking the horn on my car while I called 911 on my cell phone.
- Q. What happened next?
- A. I saw the car door on the Ford close because the dome light went out. I saw a figure run into the house. In about a minute, I saw the figure come back out and walk to where Dakota fell. Then the figure ran back into the house.
- Q. What did you do next?
- A. Nothing. I waited until I saw a police patrol car, and I got out of my car and flagged down the officer.
- Q. What happened next?
- A. I stayed in my car until an officer came over to ask me some questions. That officer told me that Dakota Smith was dead.
- Q. What did you do next?

- A. I went to Dakota's home and stayed there while police notified Dakota's wife of his death. I stayed there all night and most of the next day.
- Q. What happened next?
- A. On August 14, Mrs. Simpson drove the Ford Taurus on to my lot and gave me the keys. There was a taxi following her and she immediately left in the cab. She refused to talk to me.
- Q. Did you sell the vehicle to another customer?
- A. Yes.
- Q. Did you ever receive the delinquent payments from Mr. Simpson?
- A. No.
- Q. Did you have any other participation in this case?
- A. I was subpoenaed to testify in the criminal case brought against Mr. Simpson.
- Q. Anything else?
- A. Not that I can recall.

Sydney Lloyd

Sworn to and subscribed before me
this _____ day of _____,
20____.

Notary Public

DEPOSITION OF HOMER SIMPSON

Q. What is your name?

A. Homer Simpson.

Q. What is your address?

A. 2020 North Lamar in Austin, State of Lone Star.

Q. How old are you?

A. Thirty-eight.

Q. Are you employed?

A. I am self-employed as a yard man. I mow and maintain lawns for my customers.

Q. How long have you done this?

A. Five years.

Q. What was your job before that?

A. I was a fireman.

Q. Why did you leave that job?

A. Alcohol. They fired me for on-the-job drinking.

Q. Do you still drink?

A. It depends. When I stay with AA, I don't. When I fall off the wagon, I do. It is either one or the other.

Q. Did you buy a 1996 Ford Taurus from Lone Star Auto Sales Incorporated in January 2001?

A. Yes.

Q. I now show you what is marked Exhibits E, F, G, H, and I. Do you recognize them?

A. Some of them. One is my contract to buy the car. The rest appear to be harassing letters to force me to catch up the payments.

Q. Did you get a copy of the purchase contract when you purchased the car?

- A. Yes.
- Q. Did you understand a \$650 payment was due the first of each month?
- A. Yes.
- Q. Did you receive Exhibits F, G, H, and I at your home?
- A. I didn't sign for them, but I think I saw one of them when my wife showed it to me.
- Q. Did you ever make the May, June, July, or August payments?
- A. No.
- Q. Do you recall the purchase of the Ford Taurus?
- A. Yes.
- Q. On January 10, 2001, were you satisfied with the purchase price and payment arrangements for the car?
- A. Yes.
- Q. Were you satisfied with how Sydney Lloyd treated you that day?
- A. Yes.
- Q. Why did you buy the car?
- A. I had to junk my old car. My wife had been diagnosed with cancer, and I needed a reliable car to get her to the doctors and clinics for her treatments.
- Q. Why did you stop making your car payments?
- A. I started drinking. That caused me to lose several of my customers. So I needed our funds for food and utilities.
- Q. Did you ever try to contact Lone Star Auto Sales about the late payments?
- A. Yes. I telephoned at least once a month and told whoever I talked to that I had money problems and would like to make a partial payment.
- Q. To whom did you speak?
- A. I don't know. Whoever answered the phone.
- Q. Did the person respond to your request to make partial payments?
- A. Yes.
- Q. What did he or she say?

- A. The answer was always the same. Pay up or we come and get your car.
- Q. During this time, did anyone at Lone Star Auto Sales telephone you?
- A. No. The phone got disconnected in June or July for unpaid bills.
- Q. Did you ever get a personal visit from Lone Star Auto Sales?
- A. Only once.
- Q. When was that?
- A. August 9 or 10. It was a Thursday or a Friday.
- Q. What happened?
- A. Sydney Lloyd knocked. I answered the door. Lloyd was very rude. Lloyd said Lone Star was tired of chasing a dead beat, and Lloyd planned to walk around the house breaking out all of the windows unless I paid up immediately.
- Q. What did you do?
- A. I told Lloyd I would call the police if Lloyd broke a single window. I tried to hand the car keys to Lloyd, and I told Lloyd to take the car back.
- Q. What did Lloyd do?
- A. Lloyd said, "I don't want that piece of crap, I want cash now."
- Q. What did you do?
- A. I said my wife was ill and giving back the car was the best that I could do.
- Q. What happened next?
- A. Lloyd said that Lloyd hoped I liked a house without windows and got into a car and left.
- Q. Was anyone with Lloyd?
- A. I couldn't see into Lloyd's car because the windows were tinted. But no one came to the door with Lloyd.
- Q. What do you remember about the early morning hours of August 13, 2001?
- A. I was asleep in my bedroom. About 2 a.m., I heard a dog barking. I got up and peeked out my windows. When I looked out my front window, I saw a guy who appeared to be trying to break into the Ford Taurus.

- Q. How was the lighting?
- A. Only marginal.
- Q. What did you do?
- A. I went to my desk where I keep a handgun. I took the gun and went out the front door. I yelled at the guy, and he turned in my direction and just stood there. I walked down from my front porch and walked toward the guy.
- Q. Why didn't you go back inside and call the police?
- A. My phone was disconnected.
- Q. What happened next?
- A. As I approached the guy, he lunged at me with a large screwdriver. I fired my gun twice, and the man fell.
- Q. What happened next?
- A. I heard a horn honking. I was afraid it was a companion of the burglar. I grabbed the screwdriver and ran back inside my house. I felt sure with the honking horn and the gunshots that someone would call the police.
- Q. Why did you take the screwdriver?
- A. For proof that someone attacked me. I was afraid his companion might hide it.
- Q. What happened next?
- A. The police came. The officer used a loud speaker to order me and my wife outside. We came out and told the officer what happened. I also told the officer where to find my gun and the screwdriver I picked up.
- Q. I now show you what is marked Exhibit C. Can you identify it?
- A. It is the gun taken from me on August 13, 2001.
- Q. I now show you what is marked Exhibit D. Can you identify it?
- A. It looks like the screwdriver I picked up after the burglar tried to stab me with it.
- Q. Had you ever seen Dakota Smith before August 13, 2001?
- A. No.
- Q. Was there a toolbox full of tools in your living room on August 13, 2001?
- A. Yes.

- Q. Why was the toolbox there?
- A. The ceiling fan was not working, and I brought the toolbox in to work on the fan. I quit working on the fan around bed time on Sunday night and left the tools there because I wasn't finished.
- Q. Did the screwdriver handles in the toolbox match the handle of the screwdriver that you claim was used to attack you.
- A. I don't know. The handles could have matched. They are common Craftsman screwdrivers on sale everyday at Sears.
- Q. Why did you refuse consent to let the police search your residence?
- A. I didn't refuse. I told them that they could search if I could accompany them in every room they searched. The police refused my offer, so then I refused consent.
- Q. I now show you what is marked Exhibit K. Can you identify it?
- A. Yes. It is my sketch of my home and property as it looked on August 13, 2001.
- Q. What happened after the police ordered you and your wife outside?
- A. We came out. We answered some questions. We were directed to go in and get dressed. Then we were escorted to the police station. After some more questions, I was arrested for murder. My wife was released.
- Q. What happened to the murder charge?
- A. I spent four months in jail, but the jury found me not guilty.
- Q. Did you know that your wife took the Ford Taurus back to Lone Star Auto Sales?
- A. Only after she did it.
- Q. On August 13, 2001, did you know that an employee of Lone Star Auto Sales was attempting to repossess your Ford Taurus?
- A. No.
- Q. Why did you shoot him?
- A. I thought he was a burglar, and he attacked me with a weapon.
- Q. Did the burglar ever show you a set of car keys?
- A. I never saw a set of car keys.

Q. Do you own any significant assets?

A. Yes. I was badly injured while in jail due to negligence by jail guards. The county settled my case and paid me five hundred thousand dollars.

Homer Simpson

Sworn to and subscribed before me
this ____ day of _____,
20____.

Notary Public

DEPOSITION OF JANE SIMPSON

Q. Please state your name.

A. Jane Simpson.

Q. What is your address?

A. 2020 North Lamar in Austin, State of Lone Star.

Q. Are you the wife of Homer Simpson?

A. Yes.

Q. Who owns the residence where you are living?

A. I do. I inherited it from my mother. I own it free and clear.

Q. Are you employed?

A. I took a disability retirement offered by my company in October 2000.

Q. If I am not getting too personal, what was your disability?

A. I was diagnosed with breast cancer.

Q. Were you satisfied with your disability package?

A. I don't know how to answer that. I was facing a double mastectomy and chemotherapy. The insurance company offered \$1000 per month until I died or reached sixty-five years of age, plus continued coverage of me and my husband under the medical plan. I thought that I was dying so the word "satisfied" didn't enter my mind.

Q. Did you play any part in the purchase of the Ford Taurus from Lone Star Auto Sales?

A. No. We couldn't afford a better car, but my husband was so worried about having comfortable transportation for me that he went out and purchased it.

Q. Why couldn't you afford a newer vehicle?

A. My husband is an alcoholic. When he leaves alcohol alone, he makes about \$3000 a month in his lawn business. But when he purchased the car, my illness had caused him to start drinking. So my disability money, plus a small savings

(Revised: 01/23/02)

account, was all we had. I was able to make the monthly car payments for a few months, but other necessities, like utilities and food, took precedence.

Q. I now show you what is marked Exhibits F, G, H, and I. Can you identify these?

A. Yes. I signed for each of them.

Q. Did you show them to your husband?

A. Yes.

Q. Did the two of you discuss the letters?

A. Yes, but it didn't help. Homer was having a bad spell, and I couldn't work.

Q. Did you make any efforts to satisfy Lone Star Auto Sales?

A. I talked Homer into calling several times and offering partial payments, but they wouldn't accept them.

Q. Did you hear Homer make these calls?

A. Yes. I was there listening.

Q. Do you ever remember a representative of Lone Star Auto Sales coming to your residence?

A. Only once. It was sometime in the week before Homer shot the burglar.

Q. What happened?

A. I don't recall much. I had just returned from chemotherapy and was very sick. I remember Homer helping me into the house, and I remember him saying something about, "Here comes the blood suckers." Homer helped me to my bed.

Q. What happened next?

A. I remember Homer crying as he came into my bedroom. He said they wouldn't take the car back, and they were going to break all of the windows in our house.

Q. On that day, did you see the person or persons from Lone Star Auto Sales?

A. I may have, but I don't remember.

Q. What did you do?

A. I comforted Homer and said we would find a way to work it out.

Q. Tell me what you recall about the early morning hours of August 13, 2001.

- A. About 2 a.m., I heard a dog barking and I saw Homer get out of bed. He always checks out the house when we hear noises. I stayed in bed. I next heard the front door open and close. I got up to check on Homer. Before I got to the front door, I heard two gunshots. By the time that I reached our living room, Homer was entering the front door and closed the door. He said, "I shot a car burglar. Stay away from the door."
- Q. What did you see or do?
- A. There were no lights on in our home. I went into the kitchen and sat down in a chair. I heard a car horn honking somewhere in the distance.
- Q. What is the next thing you remember?
- A. I heard a police loud speaker ordering Homer and me out of our home. We came out through the front door. There were bright spotlights on us. We were ordered to walk down to the driveway.
- Q. Did you see the dead man on the driveway?
- A. Yes.
- Q. Did you recognize him?
- A. I didn't get a good look because he was face down, and I was very frightened.
- Q. What happened next?
- A. The police asked my husband some questions. We were then ordered to return to our home and get dressed. After that, we were transported to the police station. Homer and I were questioned separately.
- Q. Do you remember a toolbox in your living room when you went into the residence to dress?
- A. Yes. Homer is always leaving it around to fix minor home repairs.
- Q. Do you recall a gun and a screwdriver in your living room?
- A. No.
- Q. Did your husband own a firearm?
- A. Yes. He kept a handgun in the desk drawer in the house.
- Q. What happened after you got dressed?
- A. The police escorted both of us to the police station.
- Q. What happened at the police station?

- A. We were separated and questioned individually.
- Q. What happened next?
- A. Homer was arrested for murder and put in jail. I was escorted home.
- Q. How long did your husband stay in jail?
- A. Until he was found not guilty at his criminal trial.
- Q. Did you return the car to Lone Star Auto Sales?
- A. Within two or three days after the shooting. We had a xerox copy of the car title because Lone Star kept the original. I signed my husband's name in the seller's line on the copy and wrote "Lone Star Auto Sales, Inc." in the purchaser's line. I listed it as a zero money transaction. I drove the Ford to the car lot of Lone Star Auto Sales, parked it, handed the keys and the copy of the car title to the receptionist, and left in a taxi. I spoke to no one.
- Q. Did you hear from Lone Star Auto Sales after that time?
- A. I received a few letters addressed to my husband telling him he still owed money. I telephoned the car lot and told them to mail the letters to the jail if they needed for Homer to see them. Thereafter, the letters stopped at home.

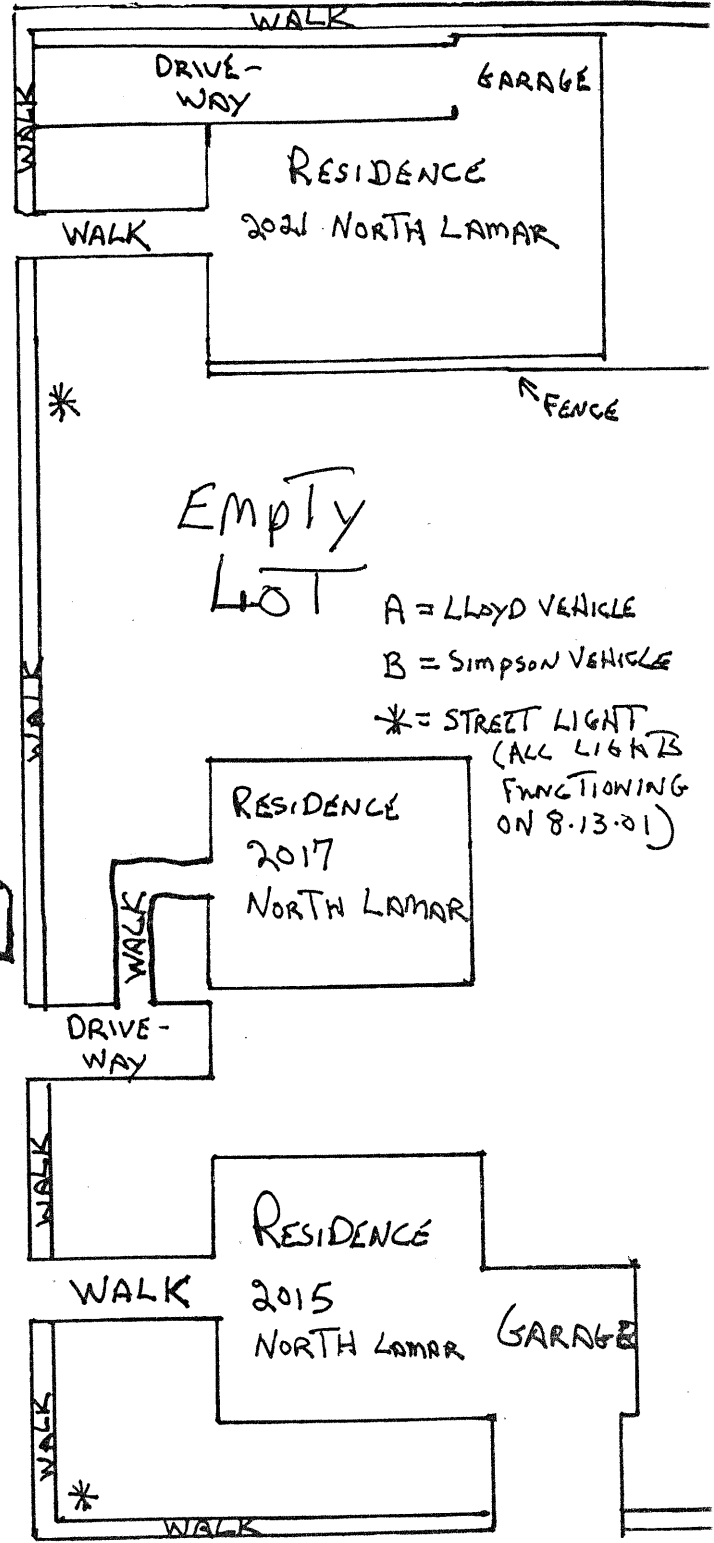
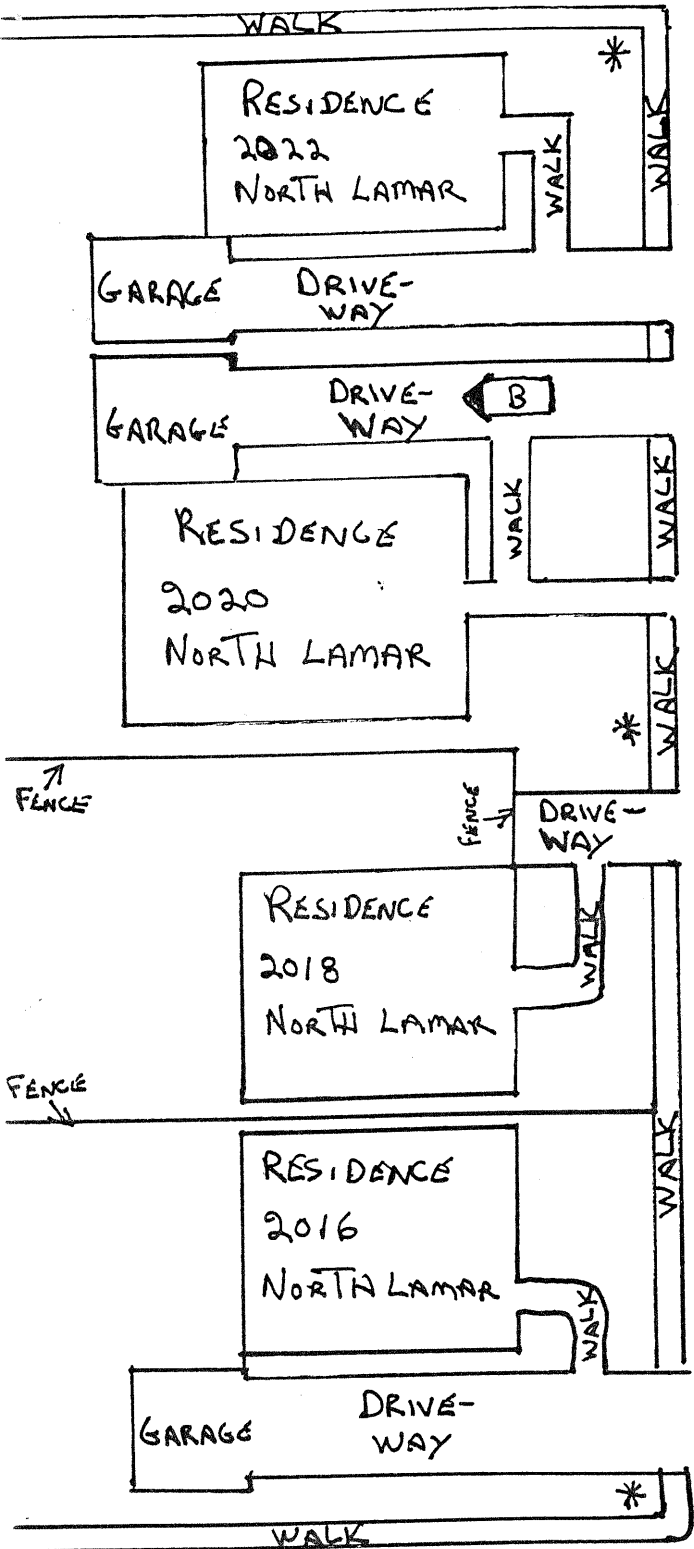
Jane Simpson

Sworn to and subscribed before me
this ____ day of _____,
20__.

Notary Public

EAST WILKINSON STREET

NORTH



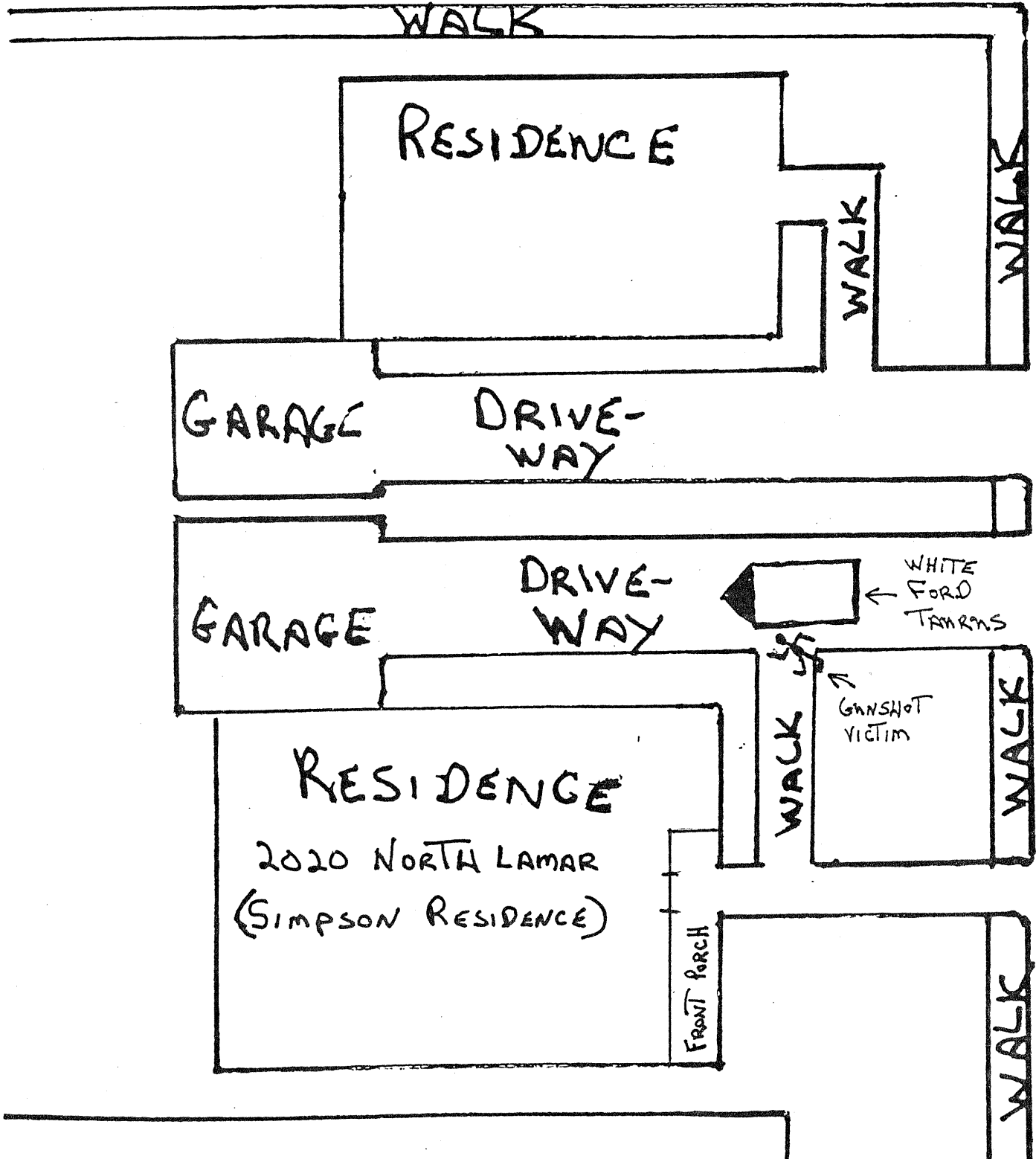
EMPTY LOT

- A = LLOYD VEHICLE
- B = SIMPSON VEHICLE
- * = STREET LIGHT (ALL LIGHTS FUNCTIONING ON 8.13.01)

NORTH LAMAR

EAST CROUCH STREET

T.L. 8.13.01



T.L.
8.13.01



EXHIBIT C

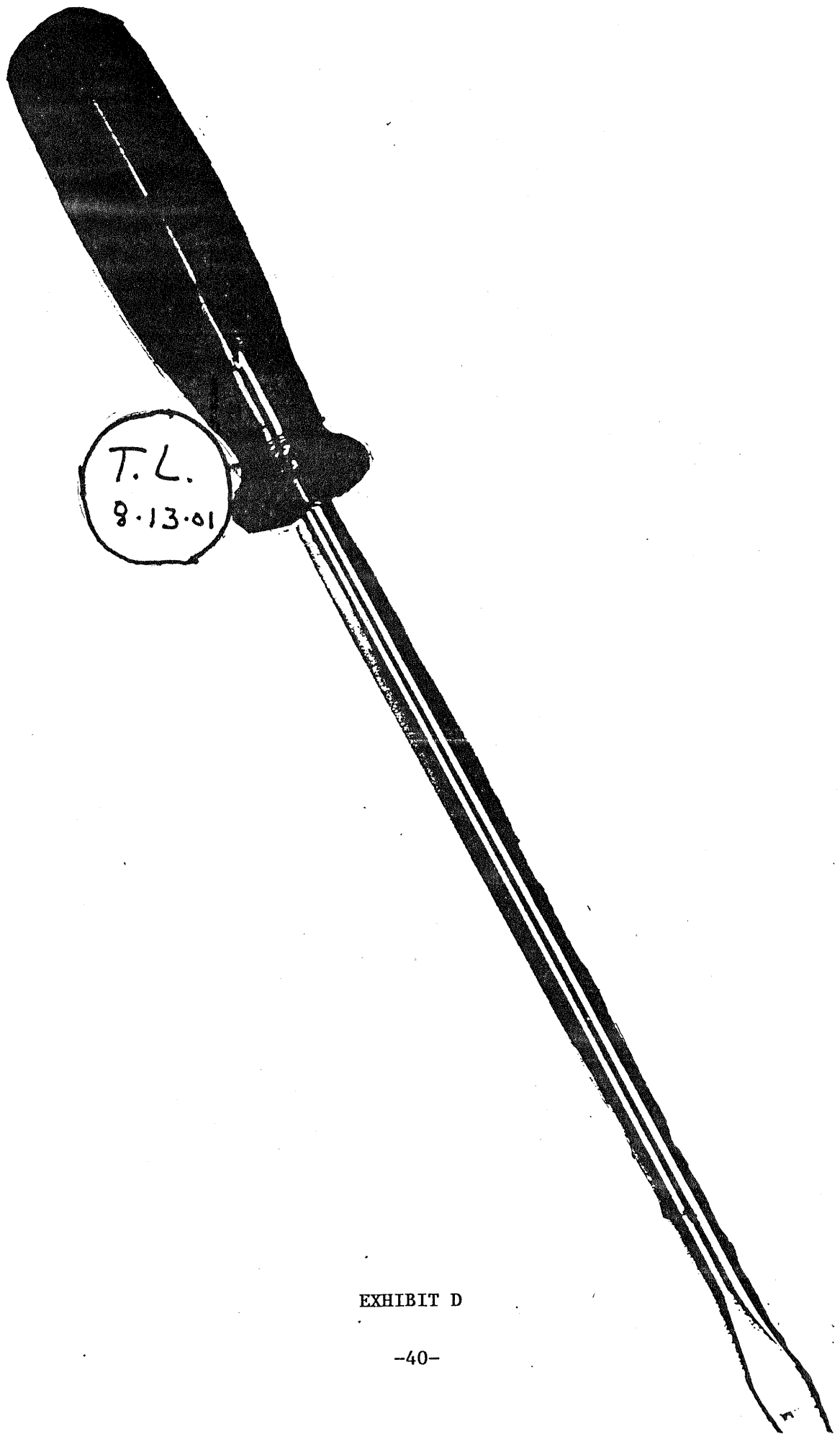


EXHIBIT D

Lone Star Auto Sales, Inc.
2015 Riverside Drive
Austin, State of Lone Star 78701
(512) 799-3734

CONTRACT FOR PURCHASE

Lone Star Auto Sales, Inc., seller, agrees to sell to Homer Simpson, buyer, the following described vehicle: 1996 Ford Taurus, VIN 8B4U1197354. Terms of the sale are as follows: payment of \$1,000 down payment by Homer Simpson, and a promise to make timely monthly payments of \$650 on the first of each month to the seller starting February 1, 2001, and the last payment on November 1, 2002. Upon receipt of \$1,000 from Homer Simpson, seller shall deliver the vehicle to Homer Simpson. The vehicle title with a recorded lien in favor of the seller shall remain with the seller, and the seller agrees to remove the lien from the title and deliver the title to Homer Simpson upon final payment by Homer Simpson.

Homer Simpson agrees that any monthly payment that is later than the third day of any month when that payment is due shall include a penalty of \$25.00 for that month in addition to the money payment. Homer Simpson agrees that the seller may peaceably retake possession of the vehicle and hold the vehicle if any of the following occurs: (1) three consecutive monthly payments are not paid, (2) failure to maintain state-required vehicle insurance, or (3) failure to maintain a valid license tag on the vehicle. Homer Simpson agrees that if the vehicle is repossessed by the seller, Homer Simpson can only regain possession of the vehicle by satisfying the condition(s) which caused the repossession. Homer Simpson acknowledges that the seller shall retain a set of keys to the vehicle to be used if the vehicle is repossessed by the seller. Homer Simpson agrees to keep the vehicle in the State of Lone Star at the address listed by Homer Simpson on this contract unless Homer Simpson provides in writing a new address within the State of Lone Star where Homer Simpson has moved his/her residence. Homer Simpson further agrees at all times to keep a valid, current license tag on the vehicle and agrees at all time to maintain the minimum vehicle insurance coverages required by the State of Lone Star.

Homer Simpson
Homer Simpson
2020 North Lamar
Austin, State of Lone Star 78703
(512) 272-3430

Sydney Lloyd
Sydney Lloyd, General Manager
Lone Star Auto Sales, Inc.

January 10, 2001
Date

Witnesses: Kimberly Falvey
Rouane P. Neitz

Exhibit E

Lone Star Auto Sales, Inc.
2015 Riverside Drive
Austin, State of Lone Star 78701
(512) 799-3734

May 9, 2001

Mr. Homer Simpson
2020 North Lamar
Austin, State of Lone Star 78703

Re: 1996 Ford Taurus, VIN 8B4U1197354

Dear Mr. Simpson:

We have not received your monthly payment of \$650, plus a penalty assessment of \$25, for the month of May 2001. You are in breach of your Contract for Purchase.

Please contact us immediately to get this matter resolved.

Sincerely,


Sydney Lloyd
Sales Manager

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Exhibit F

**Lone Star Auto Sales, Inc.
2015 Riverside Drive
Austin, State of Lone Star 78701
(512) 799-3734**

June 6, 2001

Mr. Homer Simpson
2020 North Lamar
Austin, State of Lone Star 78703

Re: 1996 Ford Taurus, VIN 8B4U1197354

Dear Mr. Simpson:

We have not received your last two monthly payments, totaling \$1300, plus penalty assessments of \$50, for the months of May and June 2001. You are in breach of your Contract for Purchase.

Please contact us immediately to get this matter resolved.

Sincerely,


Sydney Lloyd
Sales Manager

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Exhibit G

Lone Star Auto Sales, Inc.
2015 Riverside Drive
Austin, State of Lone Star 78701
(512) 799-3734

July 6, 2001

Mr. Homer Simpson
2020 North Lamar
Austin, State of Lone Star 78703

Re: 1996 Ford Taurus, VIN 8B4U1197354

Dear Mr. Simpson:

We have not received your last three monthly payments, totaling \$1950, plus penalty assessments of \$75., for the months of May, June, and July 2001. You are in breach of your Contract for Purchase, and we have the lawful right to repossess the vehicle.

Please contact us immediately to get this matter resolved.

Sincerely,



Sydney Lloyd
Sales Manager

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Exhibit H

Lone Star Auto Sales, Inc.
2015 Riverside Drive
Austin, State of Lone Star 78701
(512) 799-3734

August 1, 2001

Mr. Homer Simpson
2020 North Lamar
Austin, State of Lone Star 78703

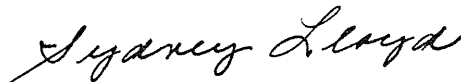
Re: 1996 Ford Taurus, VIN 8B4U1197354

Dear Mr. Simpson:

We have not received your last four monthly payments. You are in serious breach of your Contract for Purchase.

We are out of patience. We plan to repossess the vehicle. Please contact us immediately to get this matter resolved.

Sincerely,



Sydney Lloyd
Sales Manager

Exhibit I

**Lone Star Auto Sales, Inc.
Activity Log**

Vehicle: 1996 Ford Taurus
VIN 8B4U1197354

Purchaser: Homer Simpson
2020 North Lamar
Austin, State of Lone Star 78703
(512) 272-3430

Sales Date: January 10, 2001

| | | |
|------------------|----|--|
| February 1, 2001 | -- | Received payment of \$650 (Austin National Bank Check # 3012) |
| March 1, 2001 | -- | Received payment of \$650 cash. |
| April 3, 2001 | -- | Received payment of \$650 (Austin National Bank Check # 3059) |
| May 7, 2001 | -- | Telephoned residence--spoke to Mrs. Simpson. |
| May 9, 2001 | -- | Mailed delinquency letter. |
| May 15, 2001 | -- | Visited residence; car gone; no one answered door. |
| June 6, 2001 | -- | Mailed delinquency letter. |
| June 15, 2001 | -- | Visited residence; car in driveway, but no one answered door. |
| June 18, 2001 | -- | Telephoned residence; no answer. |
| June 20, 2001 | -- | Telephoned residence. Telephone company voice states phone out of service. |
| June 27, 2001 | -- | Visited residence; car in driveway; no one came to door. |
| July 6, 2001 | -- | Mailed delinquency letter. |
| July 11, 2001 | -- | Visited residence; car in driveway; no one came to door. |
| July 25, 2001 | -- | Visited residence; car in driveway; no one came to door. |
| August 1, 2001 | -- | Mailed delinquency letter. |
| August 10, 2001 | -- | Visited residence with Dakota Smith. Talked to Mr. Simpson. Simpson threatened us if we tried to take car. |
| August 14, 2001 | -- | Mrs. Simpson returned car. Car cleaned and put back on lot. |

Exhibit J

PRELIMINARY JURY INSTRUCTIONS

You have now been sworn as a jury to try this case. This is a civil case involving a disputed claim or claims between the parties. Those claims and other matters will be explained to you later. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you return to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered

by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention.

Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you are retired to the jury room to consider your verdict, after having heard all of these matters.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. When I sustain or uphold an objection, the witness cannot answer the question. If I sustain an objection, you must not speculate on what might have happened, or what the witness might have said, had I permitted the witness to answer. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be

required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in the case and give you a summary of the facts they expect the evidence will show.

FINAL JURY INSTRUCTIONS

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to weigh and consider the evidence, to decide the disputed issues of fact, and to apply the law to the facts as you find them from the evidence.

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

The first issue for your determination is whether Homer Simpson was justified in the use of a firearm against Dakota Smith. The law in this state is that the use of a firearm against another person is the use of deadly force. The use of deadly force in this state is justified only when the person using deadly force reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the imminent commission of a forcible felony.

"Forcible felony," as that term relates to this case, means aggravated assault or any other felony which involves the use or threat of physical force or violence against any individual. "Aggravated assault" means the intentional, unlawful threat by act with a deadly weapon but without the intent to kill, to do violence to the person of another, coupled with an apparent ability to do so, which creates a well-founded fear in such other person that violence is imminent.

If you find by the greater weight of the evidence that the actions of Homer Simpson, in shooting the deceased, Dakota Smith, were not in self-defense but were intentional and demonstrated a clear intent to willfully, wantonly, and maliciously injure Dakota Smith, which actions constituted a gross disregard for the safety of Dakota Smith, causing Dakota Smith's death, then you must find that Homer Smith intentionally caused the death of Dakota Smith. If you so find, you must find for Sarah Smith and indicate this on your verdict and inform the bailiff that you are ready to return to the courtroom. Should you find for Sarah Smith, you will return to the courtroom and hear from additional witnesses and presentations from attorneys concerning damages that may be awarded.

But if you find by the greater weight of the evidence that Dakota Smith was in possession of a large screwdriver and attempted to attack Homer Simpson and you find that Dakota Smith's actions created a well-founded fear in the mind of Homer Simpson that death or great bodily harm was imminent, then you may find that Homer Simpson was justified in the use of a firearm against Dakota Smith. If you so find, your verdict is

(Revised: 01/23/02)

for Homer Simpson and you should so indicate on your verdict form and inform the bailiff that you are ready to return to the courtroom.

However, if you do not find that Homer Simpson intentionally killed Dakota Smith without justification or do not find that Homer Simpson was justified in using deadly force in the shooting of Dakota Smith, you will next need to determine whether Homer Simpson was negligent in the shooting of Dakota Smith.

As to negligence, the issue for your determination on the claim of Sarah Smith against Homer Simpson is whether Homer Simpson was negligent in the shooting of Dakota Smith; and, if so, whether such negligence was a legal cause of the death of the decedent, Dakota Smith.

If the greater weight of the evidence does not support the claim of Sarah Smith, then your verdict should be for Homer Simpson.

If, however, the greater weight of the evidence does support the claim of Sarah Smith, then you shall consider the defenses raised by Homer Simpson.

On the first defense, the issues for your determination are whether Dakota Smith knew of the existence of the danger complained of; realized and appreciated the possibility of injury as a result of such danger; and, having a reasonable opportunity to avoid it, voluntarily and deliberately exposed himself to the danger complained of and, if so, whether Dakota Smith's actions in exposing himself to the danger complained of was a contributing legal cause of his own injuries and death.

(Revised: 01/23/02)

On the second defense, the issues for your determination are whether Dakota Smith was himself negligent and, if so, whether such negligence was a contributing legal cause of his death.

If the greater weight of the evidence does not support the defense of Homer Simpson and the greater weight of the evidence does support the claim of Sarah Smith, then your verdict should be for Sarah Smith, as the personal representative of the Estate of Dakota Smith.

However, if the greater weight of the evidence shows that both Dakota Smith and Homer Simpson were negligent and that the negligence of each contributed as a legal cause of the death of Dakota Smith, you should determine what percentage of the total negligence of both Dakota Smith and Homer Simpson is chargeable to each.

"Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case.

Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances.

Negligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.

Negligence is a legal cause of any injury if it directly and in natural and continuous sequence produces or contributes substantially to producing such injury, so

(Revised: 01/23/02)

that it can reasonably be said that, but for the negligence, the injury would not have occurred.

At this point in the trial you, as jurors, are only deciding if Homer Simpson was justified in shooting Dakota Smith or if Homer Simpson was negligent in shooting Dakota Smith. If Homer Simpson was negligent, you must decide whether Dakota Smith was also negligent. Should you find that there was negligence, you will first return a verdict on that issue. At that time, you will hear from additional witnesses and presentations from the attorneys concerning damages that may be awarded.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

When you retire to the jury room, you should select one of your number to act as foreperson to preside over your deliberations and to sign your verdict. Your verdict must be unanimous; that is, your verdict must be agreed to by each of you.

You will be given one form of verdict which I shall now read to you:

(READ VERDICT FORM)

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the appropriate form of verdict. You may now retire to consider the verdict.

(Revised: 01/23/02)

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR TRAVIS COUNTY, STATE OF LONE STAR

SARAH SMITH, as personal)
representative of the Estate of Dakota)
Smith, Deceased,)
)
Plaintiff,)
)
v.)
)
HOMER SIMPSON,)
)
Defendant.)
_____)

Case No. 2001-5555

VERDICT

WE, THE JURY, RETURN THE FOLLOWING VERDICT:

1. Were the actions of Homer Simpson not in self-defense but instead intentional and demonstrated a clear intent to willfully, wantonly, and maliciously injure Dakota Smith, causing the death of Dakota Smith?

YES _____

NO _____

If your answer to question 1 is YES, your verdict is for the plaintiff and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 1 is NO, please answer question 2.

2. Was Homer Simpson justified in the use of a firearm against Dakota Smith on August 13, 2001?

YES _____

NO _____

If your answer to question 2 is YES, your verdict is for the defendant and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 2 is NO, please answer question 3.

(Revised: 01/23/02)

3. Was there negligence on the part of Homer Simpson which was a legal cause of the death of Dakota Smith?

YES _____

NO _____

If your answer to question 3 is NO, your verdict is for the defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom. If your answer to question 3 is YES, please answer question 4.

4. Was there an assumption of risk or negligence on the part of the deceased, Dakota Smith, which was a legal cause of his death?

YES _____

NO _____

If your answer to question 4 is YES, please answer question 5. If your answer to question 4 is NO, do not answer question 5 and sign and date the verdict form.

5. State the percentage of any negligence, which was a legal cause of Dakota Smith's death, that you charge to:

HOMER SIMPSON _____%

DAKOTA SMITH _____%

The total of the two percentages must equal 100%.

SO SAY WE ALL this ____ day of _____, 2002.

Foreperson

(Revised: 01/23/02)