

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR DALLAS COUNTY, STATE OF LONE STAR
CRIMINAL DIVISION

STATE OF LONE STAR)	
)	
v.)	Case No. 2000-7777
)	
HOUSTON ALFORD,)	
)	
Defendant.)	
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Prepared by:

**Judge Jerry R. Parker
Second District Court of Appeal
801 E. Twiggs Street
Tampa, Florida 33602**

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This case file was commissioned by the Texas Young Lawyers Association and prepared by Judge Jerry R. Parker for the 2001 National Trial Competition. This is the twelfth year Judge Parker has provided the case file utilized for the National Trial Competition.

State of Lone Star

v.

HOUSTON ALFORD

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STATEMENT OF THE CASE

The State has charged Houston Alford with the theft of over \$20,000 from the bank deposit of Burger Heaven, Alford's former employer. Alford has testified at a prior trial that he made the bank deposit, delivering the deposit money to Molly Malone, a teller at Pecos National Bank, on September 1, 2000. Malone will testify that Alford did appear at her teller window on September 1, 2000, but only to change a \$100 bill. Tweed Campbell, regional manager of Burger Heaven, will testify to previous shortcomings in Alford's management of a Burger Heaven restaurant. MacKenzie Rogers, vice president of Pecos National Bank, will testify to problems with Molly Malone's accounting for bank funds.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Criminal Procedure and Federal Rules of Evidence apply.
2. 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.

3. 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.

4. All depositions were signed under oath.

5. 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.

6. 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.

7. 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.

8. "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(3).

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

*FOR THE
PROBLEM*

10. 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.

11. 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.

12. 2001 should be the current year in which this case comes to trial.

13. 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 prosecution shall have four minutes to present any pretrial motions; (2) the defense shall have four minutes to respond to the State's motion(s); (3) the defense shall have four minutes to present any pretrial motions; and (4) the State shall have four minutes to respond to the defense's motion(s).

14. The testimony of Houston Alford shall conform to the testimony given by Alford at his earlier trial.

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 of photographs, diagrams, or the presence or absence of bank cameras from the interior of Pecos National Bank.

Substantive Matters

1. Houston Alford has entered a plea of not guilty and has requested a trial by jury.
2. The trial court has denied a motion to dismiss the indictment.
3. The State and the defense agree that a review of all official records of Pecos National Bank compiled from August 28 through September 1, 2000, reflect that no bank deposit was recorded for the Burger Heaven Restaurant located on 711 Jenkins Avenue in Reno, State of Lone Star.
4. The State and the defense stipulate that the trial testimony of Houston Alford, starting on page 24, is an accurate transcription of the testimony of Alford taken from the trial record of a jury trial on December 18, 2000, where, at the conclusion of the trial, the jury was unable to reach a verdict.
5. Lone Star Statutes (1999) provide the following:

14.218 Definitions.--

As used in this chapter "property" means anything of value.

14.220. Theft.--

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

(2)

(b) If the property stolen is valued at \$20,000 or more, but less than \$100,000, the offender commits grand theft in the second degree, punishable as a felony of the second degree for a term not exceeding fifteen years in the Department of Corrections.

(c) It is grand theft of the third degree and a felony of the third degree, punishable for a term not exceeding five years in the Department of Corrections, if the property stolen is valued at \$300 or more, but less than \$20,000.

(d) If property stolen has a value of \$100 or more, but less than \$300, the offender commits petit theft of the first degree punishable by a term not exceeding one year in the county jail and/or a fine not to exceed \$1000.

(e) Theft of any property not specified in subsection (b),(c), or (d) is petit theft of the second degree punishable by a term not to exceed 60 days in the county jail and/or a fine not to exceed \$500.

WITNESS LIST

Witnesses for the State:

1. Tweed Campbell *
2. Molly Malone ***

Witnesses for the Defense:

1. MacKenzie Rogers *
2. Houston Alford **

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.

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

THE 6TH DAY OF OCTOBER, 2000.

THE STATE OF LONE STAR :
V. : CASE NUMBER 2000-7777
HOUSTON ALFORD :

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF LONE STAR:

The Grand Jurors of the County of Dallas, State of Lone Star, charge that Houston Alford, on the 1st day of September, 2000, in the County and State aforesaid, did knowingly obtain or use, or endeavor to obtain or to use, the property of Burger Heaven, Incorporated, a corporation registered to do business in the State of Lone Star, with the intent to either temporarily or permanently deprive Burger Heaven of the right to the property or to appropriate the property to the use of Houston Alford, to wit: Houston Alford committed a theft of over \$20,000 in cash funds but less than \$100,000 in cash funds, which was the property of Burger Heaven, Incorporated, contrary to the form of the statute in such cases and made and provided, to-wit: Lone Star Statute 14.220.

INDICTMENT FOR GRAND THEFT

A TRUE BILL:

Johann Baker
Foreman of the Grand Jury.

I, Prosecutor for the Sixth Judicial Circuit, in and for Dallas County, State of Lone Star, do hereby aver, as authorized and required by law, that I have acted in an advisory capacity to the Grand Jurors of Dallas County previous to their returning the above indictment in the above-styled cause.

Brodley Sean Parker
PROSECUTOR
SIXTH JUDICIAL CIRCUIT
DALLAS COUNTY

Presented before *C. J. Stacy*
Circuit Judge.

DEPOSITION OF TWEED W. CAMPBELL

Q. Please state your name.

A. Tweed W. Campbell.

Q. What is your address?

A. 614 South Cedar, Reno, State of Lone Star.

Q. Where are you employed?

A. I am the regional manager of Burger Heaven. My office is located at 1470 Tuttle Road in Reno.

Q. How long have you been employed there?

A. Fourteen years.

Q. How long have you been regional manager?

A. Six years. I formerly served in several different jobs as an assistant regional manager, an office manager, and as accounting officer.

Q. What does the job of regional manager of Burger Heaven require you to do?

A. Burger Heaven is a corporation that controls franchise operations in several locations. I oversee twenty-three Burger Heaven restaurants in my region. These restaurants are fast-food outlets similar to Burger King. Either I or my staff members inspect the restaurants for compliance with all company rules. We check for correct compliance with cleanliness, federal and state work rules, correct inventory procedures, oversee advertising, correct accounting procedures, and numerous other functions.

Q. Does Burger Heaven have a policy on handling money?

A. Yes.

Q. What is that policy?

A. Our rules require that a deposit be taken to a bank every morning, Monday through Friday. Each restaurant is to keep on hand \$850 in bills no larger than a twenty and coins of at least \$150. All money in excess of those two amounts goes to the bank for daily deposit.

- Q. Explain what the corporation's policy is on these deposits.
- A. The restaurant manager prepares a deposit slip for the money that is to be deposited. The manager makes a copy of the deposit slip to keep for restaurant records. Then the manager places the money and the deposit slip in a bank bag and takes the bag to the bank. The bank teller returns a receipt showing the bank received an amount of money. The manager makes a copy of that receipt to keep on location and mails the original slip to regional headquarters with a copy of the restaurant's deposit slip.
- Q. On August 25, 2000, who was the manager of the Burger Heaven Restaurant at 711 Jenkins Avenue in Reno, State of Lone Star?
- A. Houston Alford.
- Q. On August 25, 2000, how long had Alford served as restaurant manager?
- A. Two years.
- Q. On August 25, 2000, what was Alford's total time of employment with Burger Heaven?
- A. Five years.
- Q. Were you Alford's supervisor?
- A. Yes.
- Q. How would you describe Alford as a restaurant manager?
- A. Somewhere between fair and acceptable.
- Q. Do you consider those two ratings low?
- A. Yes.
- Q. Why did you let Alford remain there if he was only fair to acceptable?
- A. The company's pay scale is too low. I try to work with what I can get and whoever will stay.
- Q. What were Alford's shortcomings as a manager?
- A. Inattention to details. Not keeping the restaurant clean, which caused the county health department to issue warnings. Trying to date the young ladies who worked there and giving preferential work shifts to the ones who would go out with him. Failure to timely order supplies. Improper handling of money.

- Q. Let me ask about that last one. How did Alford improperly handle money?
- A. Well, sometimes he would take money that was not his.
- Q. How do you know this?
- A. Each cash register drawer starts out with \$200 in bills and coins. The manager's job is to always start a new drawer with that amount. Each drawer is changed every two hours and the running tape of all the sales listed in the removed drawer is placed in that drawer. A new drawer with \$200 is substituted. Each food order that is received is time stamped with the food order, its total amount, the money received, and the change to be given the customer. So at the end of the day, one can match up the money taken in, deduct the \$200 starting amount, and the money in the drawer should equal the amount listed on the running tape. Company policy requires each drawer to show the manager's handwritten amount of shortage on the cash register tape for that drawer. Under Alford's management, several times the end-of-day drawer totals did not match the amount of money due for deposit.
- Q. What did you do?
- A. Verbal warnings at first. The amounts were usually under ten dollars and Alford always blamed the employees for giving back incorrect change. I let it slide until the amounts reached a total of over \$300 between June 1 and July 31. I then told Alford that shortages exceeding five dollars would come out of his check.
- Q. What happened after that?
- A. The shortages stopped until August 15, 2000.
- Q. What happened on that date?
- A. Alford's bank deposit was \$167 short even though the drawer totals showed no shortages.
- Q. What did you do?
- A. I called Alford and explained to him that that amount would come out of his next paycheck.
- Q. I now show you what has been marked Exhibit A. Do you recognize it?
- A. Yes. It is a disciplinary form I gave to Alford on August 16, 2000.
- Q. Whose handwriting is on the form?

- A. The top half is my handwriting. The bottom half is that of Alford.
- Q. Is Exhibit A an official record that you maintain for the Burger Heaven Corporation?
- A. Yes.
- Q. Did you direct the company to deduct \$167 from Alford's next paycheck?
- A. Yes.
- Q. Did you have any other instances where you believe Alford mishandled funds?
- A. Yes.
- Q. Please explain.
- A. During the week of August 28, 2000, I did not receive daily bank deposit slips from our Jenkins Avenue restaurant. I telephoned Alford when I didn't get copies of the deposits from August 28, 29, and 30. Alford claimed he made the deposits and told me that they must have gotten lost in the mail.
- Q. What did you do?
- A. I decided to wait a couple of days. But when I didn't receive a deposit slip for August 31, I drove to the Jenkins Avenue restaurant on the morning of Saturday, September 2, 2000. I decided that I couldn't wait to see if my Saturday business mail would reflect a deposit made on September 1, 2000.
- Q. What happened?
- A. I got to the Jenkins Avenue restaurant at 6:30 a.m., which is when the first shift of employees arrive. Alford was not there, and the assistant manager, Charles Samarkos, had been trying to reach me by telephone.
- Q. Do you know why?
- A. Yes. There was a copy of a deposit slip totaling \$20,000.01 on Alford's desk with a slip of paper. Also located on that desk was Alford's letter of resignation.
- Q. I now show you what is marked Exhibit B. Do you recognize it?
- A. Yes.
- Q. What is it?

- A. It is the copy of the bank deposit slip I found that day. I took custody of it and filed it with my business records.
- Q. I now show you what is marked Exhibit C. Do you recognize it?
- A. Yes. It is the slip of paper I found on Alford's desk on September 2, 2000. I also filed it in my records.
- Q. I now show you what is marked Exhibit D. Do you recognize it?
- A. Yes. It is Alford's letter of resignation. It is in Alford's own handwriting, which I have seen several times.
- Q. What did you do?
- A. I put on an apron and worked in Alford's place that day. I helped close the restaurant that night and promoted the assistant manager to Alford's position. I made sure the assistant manager was familiar with all of our company policies. I determined at that time that the \$20,000.01 equaled the total amounts taken in at the restaurant for the work days of Friday, August 25, 2000, through 9:00 a.m. on Friday, September 1, 2000.
- Q. What was your next involvement with Alford?
- A. Well, Monday, September 4, was Labor Day and the banks were closed. So Tuesday, September 5, 2000, I went to Pecos National Bank and spoke to MacKenzie Rogers. I asked for a copy of a bank receipt to reflect the deposit by Alford of \$20,000.01. Rogers could locate no record of that deposit. Rogers checked with the tellers. One teller recalled Alford coming to the bank on September 1, 2000, but told Rogers no deposit was made.
- Q. What did you do next?
- A. I telephoned the police and told them I suspected Alford had stolen money from the company.
- Q. What other information do you have about this case?
- A. Not much. I met with police. I showed them the items which you have shown me today marked as exhibits. I was interviewed by police. And a detective telephoned me and informed me when they arrested Alford.
- Q. Anything else?

- A. On September 6, 2000, I found an envelope at my office which was delivered in the regular mail. Inside were the keys to the restaurant on Jenkins Avenue. There was no note.

Tweed W. Campbell
Tweed W. Campbell

Sworn to and subscribed before me
this 1st day of November, 2000.

Vicky True
Notary Public

DEPOSITION OF MOLLY MALONE

Q. Please state your name.

A. Molly Malone.

Q. What is your address?

A. Apartment 307, 1010 12th Street, Reno, State of Lone Star.

Q. Where are you employed?

A. I am a teller at Pecos National Bank in Reno.

Q. How long have you been so employed?

A. Eight years.

Q. What is your salary?

A. I earn \$24,000 per year.

Q. Are you married?

A. No. I have been divorced for four years.

Q. How old are you?

A. Twenty-eight years.

Q. Do you have children?

A. Yes. Two girls, ages four and eight.

Q. Are you receiving alimony or child support?

A. No.

Q. May I ask why?

A. My ex-husband is in prison for murder. He never worked much, which was the reason for the divorce.

Q. Do you have any other sources of income?

A. No. I have recently applied for some government assistance toward housing and child expenses, but I don't know if I am eligible.

- Q. So I assume you struggle to make ends meet?
- A. That is true.
- Q. Do you know Houston Alford?
- A. Yes.
- Q. How do you know him?
- A. Mostly from his making bank deposits where I work.
- Q. How often did he make deposits?
- A. Until last August 2000, I saw Alford in our bank most everyday the bank was open.
- Q. Did Alford always come to your teller window?
- A. No.
- Q. When Alford came to your window, please explain your procedure.
- A. Alford would open a cloth bank bag and hand me a deposit slip with cash and coins. I would count the money to make sure the amount of money equaled the amount listed on the deposit slip. If the amount was correct, I would give Alford a bank receipt reflecting that the bank had received that amount of money. If the amount on the deposit slip was incorrect, I would note the correction on the deposit slip, notify Alford of the correction, and issue a bank receipt reflecting the correct amount.
- Q. Did you provide teller services to Alford often?
- A. I probably averaged waiting on him one to two times per week.
- Q. You mentioned a change in Alford's bank visits in late August 2000, did you not?
- A. Yes.
- Q. Tell me about that.
- A. I didn't see Alford on Monday, August 28, through Thursday, August 31, 2000. He may have been in, but I didn't see him.
- Q. Did you see Alford at all that week?
- A. Yes. On Friday, September 1, 2000.
- Q. What happened?

- A. Alford came to my window and opened a bank bag. He took out a one hundred dollar bill and asked me for three twenties, two tens, and twenty ones. He told me that he needed some smaller bills for gas because he was quitting his job and leaving town. I took the bill and gave him the denominations he requested.
- Q. Was there any paperwork that you performed with this transaction.
- A. Yes. I run a calculator tape with every transaction.
- Q. I show you what is marked Exhibit E. Do you recognize it?
- A. Yes. It is the tape I ran on September 1, 2000, when Alford was at my teller window.
- Q. I show you what is marked Exhibit C. Do you recognize it?
- A. I recognize the paper as note paper available at the bank.
- Q. Is the handwriting on Exhibit C your handwriting?
- A. I don't believe it is.
- Q. Are you sure?
- A. The best I can tell you is that it does not look like my handwriting, and I don't recall writing it.
- Q. I now show you what is marked Exhibit B. Do you recognize it?
- A. I recognize that it is a bank deposit slip, and I recognize Alford's handwriting. But I never saw this deposit slip on September 1, 2000.
- Q. Do you recall any conversation between you and Alford on September 1, 2000?
- A. No. I did not like to talk to Alford.
- Q. Why not?
- A. Alford asked me out on a couple of dates two years ago. The first date went okay. On the second date, we came home from a movie and I realized the kids needed some milk. Alford volunteered to watch the kids while I ran to the grocery. I was only gone twenty minutes. When I returned, Alford departed. After he departed, my older girl started telling me about Alford's "bad touches" on her.
- Q. What did you do?
- A. I called the sexual abuse hot line.
- Q. What happened?

- A. My child and I were questioned. She was examined at the hospital. I was told that Alford was questioned. No charges were filed.
- Q. Did you ever have any further contact with Alford?
- A. Only at the bank.
- Q. Did you continue to serve Alford at the bank?
- A. I had no choice. My supervisor gave me no choice. I was required to be nice to him or lose my job.
- Q. Have you had a problem with shortages in your cash drawer over the years?
- A. Yes. As a single mother with a very limited income, I am sure my personal problems may have caused me to make mistakes over the years. The bank has put memos in my personnel file about this.
- Q. Did you ever take any money which belonged to Burger Heaven or Houston Alford?
- A. As God is my witness, absolutely not.
- Q. What time did Alford approach your teller window on September 1, 2000?
- A. About 9:30 a.m.
- Q. Do you recall what were the weather conditions that morning?
- A. It was stormy. There was lightning and heavy rain.
- Q. When did you buy a new car and how much is your monthly payment?
- A. In late September 2000. A Ford dealer took my old car in trade, and my new monthly car payments of \$400 won't start until January 1, 2001.
- Q. How can you afford that?
- A. It seemed that I was spending that much in repairs to keep my old car running. I'll have to manage.


Molly Malone

Sworn to and subscribed before me
this 9th day of November, 2000.


Notary Public

DEPOSITION OF MACKENZIE ROGERS

- Q. Please state your name.
- A. MacKenzie Rogers.
- Q. What is your address?
- A. 2311 Elm Street, Reno, State of Lone Star.
- Q. Where are you employed?
- A. I am Vice-President and Chief of Security at Pecos National Bank in Reno.
- Q. Do you know the defendant Houston Alford?
- A. Yes.
- Q. How do you know him.
- A. Alford first came to my attention when Molly Malone asked that she not be required to deal with Alford at her teller window.
- Q. When was that?
- A. About three years ago.
- Q. How did you handle that request?
- A. I told Molly that she had to serve all of our customers, without exception.
- Q. Did you let Molly Malone explain the reason for her request?
- A. I don't remember, but it would not have made any difference.
- Q. Are you Molly Malone's supervisor?
- A. One of them.
- Q. How would you rate Molly Malone as an employee?
- A. Average.
- Q. Why is she average?

- A. Her attention to details seemed lacking. I think she was struggling to raise two children as a single mother.
- Q. What problems have you had with Molly Malone?
- A. There have been shortages when she checked out at the close of business.
- Q. How many?
- A. Five over five years.
- Q. Did you make a record of these shortages?
- A. Yes.
- Q. How did you make a record of these shortages?
- A. I would send a memo to Molly on the day following the shortage and put a copy of the memo in her personnel file.
- Q. Do you have a copy of those memos with you here today?
- A. Yes.
- Q. Did you keep a copy of these memos in the ordinary course of your banking business?
- A. Yes.
- Q. I now show you Exhibits F, G, H, I, and J. Can you identify these exhibits?
- A. Yes.
- Q. What are they?
- A. Each is a copy of a memo I personally gave to Molly Malone on the next work day after her close-of-day checkout on the previous day reflected a shortage of money.
- Q. How were you made aware of these shortages?
- A. A teller is required to report shortages daily when they balance their cash drawers.
- Q. So Molly Malone reported these shortages herself?
- A. Yes.

- Q. Did you take any disciplinary action other than the memos you handed to Malone?
- A. No.
- Q. Are these shortage amounts unusual?
- A. Yes. Over ten years, our average out-of-balance for ten tellers in one work day is \$1.43.
- Q. Have there been other instances of Malone's work which you feel are substandard?
- A. Yes.
- Q. Please elaborate.
- A. On July 16, 1999, a bank bag was found in a trash can behind Malone's teller window. It was a bag that had been placed in the overnight deposit drop at our bank the night before.
- Q. To whom did the bank bag belong?
- A. Daylight Donuts, one of our customers.
- Q. Was the bag open or closed?
- A. It was closed and locked. We have a service to businesses who bank with us that allows them to drop off a locked bag of money into our drop box after banking hours. Each bag is identified as belonging to a certain business. The customer then comes into the bank the following business day and signs a receipt and accepts back the bag. The customer can then leave with the bag or deposit the contents of the bag into that customer's account.
- Q. Why does your bank maintain this service?
- A. It permits businesses to keep a lesser amount of cash at a business to reduce the chance of losses through theft or robbery.
- Q. On July 16, 1999, who found the bank bag in the trash can?
- A. I did.
- Q. What caused you to look in the trash?
- A. The manager of Daylight Donuts arrived and requested his bank bag. It was not with the other bank bags, so I started looking for it.

- Q. Do you know how much money was in the bag?
- A. Yes. \$2,345.
- Q. How do you know this?
- A. After the bag was located, the manager of Daylight Donuts and I counted it together.
- Q. How do you think this bag got into the trash?
- A. I have my suspicions.
- Q. What are those suspicions?
- A. I think Molly Malone put the bag in the trash and planned to steal it later.
- Q. What proof do you have of these suspicions?
- A. Only the shortages we have discusses.
- Q. Did you take any disciplinary actions against Malone.
- A. No.
- Q. Why?
- A. The overnight bags were all piled on a shelf located above the trash can. It was possible that one accidentally fell into the trash. Also, the shelf and the trash can were located on a back wall between the teller windows of Molly Malone and Julie Fox. Each employee would have been the same distance from the bag and the trash can.
- Q. Has Julie Fox ever been written up for shortages at the end of her work day?
- A. No.
- Q. How would you describe Fox's work record?
- A. Excellent.
- Q. Did any other events occur because of this missing bank bag incident?
- A. Daylight Donuts moved their account to another bank.
- Q. Did you question Molly Malone and Julie Fox about the bag ending up in a trash can near their work locations?
- A. Yes.

- Q. What did they tell you?
- A. Fox said she felt that it accidentally fell. Malone said she saw Fox stacking the bags on the shelf and if the bag ended up in the trash, Fox must have caused it.
- Q. Have you had any other occasion to review Malone's work?
- A. Yes.
- Q. When?
- A. About two weeks after the bank bag incident, Julie Fox claimed she saw Molly Malone remove a ten dollar bill from her cash drawer and place it in her pocket just as Malone was leaving for lunch.
- Q. Who did Julie Fox notify?
- A. Me.
- Q. When?
- A. Within ten minutes of when she saw Malone lift the bill.
- Q. What did you do?
- A. I waited for the end of the day and then had Molly Malone count out the contents of her cash drawer in front of me.
- Q. What did you find?
- A. There were no shortages.
- Q. Do you have a bank rule against a teller borrowing money from a cash drawer?
- A. Yes. The rule does not allow for borrowing money from a drawer even if it is replaced the same day.
- Q. Does Molly Malone know that Julie Fox reported her?
- A. I don't know. I didn't tell her.
- Q. On September 1, 2000, were you on duty at the Pecos National Bank?
- A. Yes.
- Q. Were there any power problems reported to you that affected calculators, computers, or any other type of machine or appliance that required electrical power?

- A. I don't recall.
- Q. Did you personally experience any power problems or outages on that date?
- A. I don't recall. Storms sometimes cause those.
- Q. Since September 1, 2000, has Molly Malone's lifestyle exhibited any indication of extra money? That is, has anything like new clothes or a new car come to your attention?
- A. She never seems to buy new clothes, but she did trade her old car for a newer one.
- Q. Have you ever seen Molly Malone's handwriting?
- A. Hundreds of times.
- Q. I now show you what is marked exhibit C. Do you recognize the handwriting on it?
- A. I can't say for sure. It resembles Molly's handwriting, but I can't say positively that it is or is not Molly's handwriting.


Mackenzie Rogers

Sworn to and subscribed before me
this 20th day of November, 2000.


Notary Public

PRIOR TRIAL TESTIMONY OF HOUSTON B. ALFORD

Direct Examination

- Q. State your name.
- A. Houston B. Alford.
- Q. Where do you reside?
- A. Right now, I am a guest of the sheriff of Dallas County. I am incarcerated in his jail.
- Q. Where did you last reside?
- A. I was residing in a cabin on Moosehead Lake in upstate Maine when I was arrested on a warrant from the State of Lone Star. That arrest occurred in late September 2000. I waived extradition and have been in jail ever since.
- Q. Were you in the courtroom and did you hear the testimony of Tweed Campbell concerning how money was handled at Burger Heaven at 711 Jenkins Avenue in Reno, State of Lone Star?
- A. Yes.
- Q. Were you the manager of that location from August 1998 to August 2000.
- A. Yes.
- Q. Was Tweed Campbell correct as to how the company required that money was to be handled at that location?
- A. Yes.
- Q. Did you follow the daily deposit requirement on Monday, August 28, 2000?
- A. No.
- Q. Did you follow the daily deposit requirement on Tuesday, August 29, 2000?
- A. No.
- Q. Did you follow the daily deposit requirement on Wednesday, August 30, 2000?

- A. No.
- Q. Did you follow the daily deposit requirement on Thursday, August 31, 2000?
- A. No.
- Q. Why did you disobey company rules on those days?
- A. I knew that I was going to quit. I knew that I never wanted to work for Burger Heaven again. I figured that if I made one big deposit at the end of the week, the company had not suffered.
- Q. Did you make a bank deposit for Burger Heaven on Friday, September 1, 2000?
- A. Yes.
- Q. What was the amount of that deposit?
- A. \$20,000.01.
- Q. Who was the teller with whom you transacted business of September 1, 2000?
- A. Molly Malone.
- Q. What time did this transaction occur?
- A. Between 9:15 a.m. and 10:30 a.m.
- Q. Did you present a deposit slip?
- A. Yes.
- Q. I now show you what has been marked Exhibit B. Do you recognize it?
- A. Yes. That is a copy of the deposit slip I presented to Molly Malone on September 1, 2000. It is in my handwriting.
- Q. Did you get a bank receipt for this transaction?
- A. Yes.
- Q. I now show you what is marked Exhibit C. Do you recognize it?
- A. Yes. That is the receipt Molly Malone gave me on September 1, 2000.
- Q. Does it look like the bank receipts you have received in the past?
- A. No.

- Q. Why is Exhibit C different?
- A. There was a bad storm outside. Molly Malone gave me Exhibit C because she said the storm was interfering with her computer. She said that the bank would mail an official deposit slip to my restaurant with a copy to Burger Heaven's regional headquarters that afternoon once the storm passed.
- Q. Was that acceptable to you?
- A. Sure. I always trusted the bank.
- Q. Did Molly Malone keep your deposit slip?
- A. Yes.
- Q. Did you take Exhibit C back to your restaurant for record keeping?
- A. Yes.
- Q. Did you maintain a copy of your September 1, 2000, deposit slip at your restaurant?
- A. Yes. It has already been given to the court today marked Exhibit B.
- Q. Are you comfortable with the way you resigned from Burger Heaven?
- A. Upon hindsight, I handled it poorly. I closed up on Friday, September 1, 2000. I left the copy of the bank deposit slip. I left my handwritten receipt by the teller, and I wrote a letter of resignation. I left it on my desk. I needed the keys to lock up. After I locked up, I put the keys in an envelope, addressed it to regional headquarters, and dropped the envelope at the post office. I also requested that my last paycheck be mailed to my brother so that he could forward it to me.
- Q. What did you do next?
- A. My apartment rent was paid up through August 31. I went home and loaded all of my stuff into my old car and drove to Moosehead Lake, Maine, where my brother owns a vacation cabin. I was there when I was arrested on the out-of-state warrant.
- Q. Did you steal the missing \$20,000.01?
- A. No, I did not.
- Q. No further questions.

Cross-Examination

Q. How old are you?

A. Thirty-five.

Q. How much education have you had?

A. I completed the eleventh grade. Then I went back later and got my G.E.D.

Q. Were you in the military?

A. Yes.

Q. How long?

A. Fifteen months.

Q. Were you discharged?

A. Yes.

A. What kind of discharge?

A. General.

Q. What was the reason given for the general discharge?

DEFENSE ATTORNEY: Objection.

THE COURT: Overruled.

A. Drug abuse.

Q. Do you admit that Burger Heaven Corporation is entitled to \$20,000.01 accumulated by you from August 25, 2000, through the early morning of September 1, 2000?

A. Yes.

Q. You admit that you were in Pecos National Bank on the morning of Friday, September 1, 2000?

A. Yes.

Q. Did you conduct any other transaction other than your claimed deposit of the restaurant's money?

A. Yes.

- Q. What else did you do?
- A. I changed a one hundred dollar bill into smaller bills.
- Q. So Molly Malone was right about that transaction?
- A. Yes.
- Q. I now show you what is marked Exhibit D. Do you recognize it?
- A. Yes.
- Q. What is it?
- A. It is my letter of resignation.
- Q. Did you mention going to Moosehead Lake in this letter?
- A. No.
- Q. You said you were going to Las Vegas, didn't you?
- A. Yes.
- Q. What were you going to use to finance your Las Vegas trip?
- A. I didn't go to Las Vegas.
- Q. You did have time to leave Reno, State of Lone Star, fly to Las Vegas, stay there a couple of weeks, and still be in Moosehead Lake when you were arrested.
- A. I had time, but I didn't do that.
- Q. Who saw you at Moosehead Lake during the month of September 2000?
- A. No one that I know.
- Q. You do agree that you violated company rules by not making a daily deposit during the week of August 28, 2000?
- A. Yes, but the company didn't lose any money.
- Q. Well, the company lost over \$20,000 didn't they?
- A. Yes, but that wasn't my fault.
- Q. Whose fault was it?
- A. I think it was the fault of Molly Malone.

- Q. Why would a bank teller steal the money of Burger Heaven?
- A. Because she needed it and to make me look guilty.
- Q. Why would Molly Malone want you in trouble?
- A. Because she thinks I abused her little girl.
- Q. Did you abuse that child?
- A. No.
- Q. So Molly Malone is lying about you, and her child is lying about you?
- A. Yes.
- Q. Why would a child want to lie about you?
- A. I don't think she did. The police found out that she had been to one of those "bad touch" classes at school and that was what was on her mind when I gave her a hug.
- Q. So you hugged a young child while her mother was not around, a child you hardly knew?
- A. Yes. I hugged both children. I wanted them to like me because I liked Molly Malone.
- Q. Molly Malone never went out with you again, did she?
- A. No.
- Q. But you kept bothering her at her teller window, didn't you?
- A. I didn't bother her. I always selected the window that had the shortest line.
- Q. I now show you what is marked Exhibit C. Is that your handwriting?
- A. No. That is the handwriting of Molly Malone.
- Q. You heard Molly Malone state that it didn't look like her handwriting, didn't you?
- A. Yes.
- Q. Is she lying about that also?
- A. Yes.
- Q. Did you steal company money from a deposit on August 15, 2000?

- A. I borrowed it.
- Q. Did you notify Tweed Campbell that you were borrowing money before you helped yourself to it?
- A. No.
- Q. So if someone wasn't closely checking the deposits, that \$167 would have gone unnoticed, wouldn't it?
- A. I don't know. But the amount was repaid.
- Q. Only by Tweed Campbell docking your pay, right?
- A. That is how the amount was repaid.
- Q. You agree that there were cash shortages at the Jenkins Avenue Burger Heaven between June 1, 2000, and July 31, 2000, totaling \$300 or more?
- A. Yes.
- Q. It was your job to see that the amounts due the company were complete, wasn't it?
- A. Yes.
- Q. And you failed, didn't you?
- A. I didn't fail. When a company pays minimum wage, the quality of help is not great. I can tell you I didn't take one penny of the \$300.
- Q. You didn't need it. You got over \$20,000, didn't you?
- A. I did not.
- Q. Why does your resignation letter state: "I am going to Las Vegas?"
- A. I was trying to boost the spirits of my coworkers. I was dead broke. I had just enough money to drive to Maine.
- Q. Didn't you have \$3,457 cash on you when you were arrested in Maine?
- A. Yes, but that was money from cashing a check my brother mailed to me when he found out that I was broke.

[NO FURTHER QUESTIONS FROM THE PROSECUTOR OR THE DEFENSE.]

Burger Heaven Corporation

Employee Disciplinary Form

TO: Houston Alford

FROM: Tweed W. Campbell

DATE: 8/16/2000

DESCRIPTION OF INCIDENT:

This will confirm our telephone conversation on this date in which you admit that you took \$167 of restaurant funds from the receipts of 8/15/00, which did not belong to you, and used those funds for your personal use. Immediately return this form to me with your written explanation for your actions.

EMPLOYEE RESPONSE:

Sorry. The brakes went out on my car and I had to get them fixed. Otherwise I could not get to work. I admit that I owe the money.

EMPLOYEE SIGNATURE: Houston Alford

DATE: 8/17/00

Exhibit A

DEPOSIT TICKET

BURGER HEAVEN
711 Jenkins Avenue
Reno, State of Lone Star 74010

Date 9/1/2000

Sign Here if Cash Received from Deposit

Pecos National Bank
Reno, State of Lone Star

•:230730106•: 003602524913•

Cash 20⁰-4420

10⁰-4440

5⁰-9620

1⁰-1000

COINS - 520.01

Subtotal 20,000.01

Less Cash X

Total \$20,000.01

Exhibit B

Pecos National Bank
Reno, State of Lone Star

9/1/00

Received from
Burger Heaven

\$ 30,000.01

MM

Exhibit C

9/1/2000

TO WHOM IT MAY CONCERN:

I RESIGN AS MANAGER OF
BURGER HEAVEN - JENKINS AVENUE.
I HAVE PLACED THE RECORDS
OF THE LAST BANK DEPOSIT
WITH THIS LETTER. I WILL LOCK
UP AND MAIL THE KEYS TO
REGIONAL HEADQUARTERS. MAIL
MY LAST SALARY CHECK TO
DR. HAROLD ALFORD, M.D., 801
MEDICAL ARTS BLVD., RENO, STATE
OF LONE STAR, 74010.

BURGER HEAVEN DOES NOT PAY ME
ENOUGH FOR THE REQUIRED WORK
HOURS AND RESPONSIBILITY. I
HAVE HAD IT! I AM GOING
TO LAS VEGAS FOR SOME R+R!

Houston Alford

Exhibit D

09/01/2000	
MM	
R	
1 x 100.00	<u>100.00</u>
	100.00
D	
3 x 20.00	60.00
2 x 10.00	20.00
20 x 1.00	<u>20.00</u>
	100.00

Exhibit E

**Pecos National Bank
Reno, State of Lone Star**

MEMORANDUM

TO: Molly Malone
FROM: MacKenzie Rogers
DATE: August 19, 1996
SUBJECT: Shortage

You reported a shortage of \$19.00 when you ran your transactions and counted your money on Friday, August 16, 1996.

Please pay closer attention to the way you handle the bank's money.

EXHIBIT F

**Pecos National Bank
Reno, State of Lone Star**

MEMORANDUM

TO: Molly Malone
FROM: MacKenzie Rogers
DATE: August 15, 1997
SUBJECT: Shortage

You reported a shortage of \$42.00 when you completed your work day totals yesterday. This is not the first time. You need to concentrate when you pay out cash to customers.

EXHIBIT G

**Pecos National Bank
Reno, State of Lone Star**

MEMORANDUM

TO: Molly Malone
FROM: MacKenzie Rogers
DATE: August 31, 1998
SUBJECT: Shortage

You reported a negative cash balance of \$11.00 when you closed out on Friday, August 28, 1998. This is the third memo of this nature in your personnel file. Pay attention!

EXHIBIT H

**Pecos National Bank
Reno, State of Lone Star**

MEMORANDUM

TO: Molly Malone
FROM: MacKenzie Rogers
DATE: June 2, 1999
SUBJECT: Shortage

You reported a negative cash balance of \$8.00 when you completed your transactions yesterday. This is your fourth memo concerning a shortage. If you are having personal problems, come see me.

EXHIBIT I

**Pecos National Bank
Reno, State of Lone Star**

MEMORANDUM

TO: Molly Malone
FROM: MacKenzie Rogers
DATE: August 30, 1999
SUBJECT: Shortage

You reported a negative balance of \$13.00 when you completed your transactions on Friday, August 27, 1999. This is your fifth memo to your personnel file regarding shortages. I have been authorized by the bank president to inform you that all subsequent shortages which you report or the bank finds attributed to you will be deducted from your salary.

EXHIBIT J

PRELIMINARY INSTRUCTIONS

Pretrial Instructions

Ladies and gentlemen of the jury:

You have been selected and sworn as the jury to try the case of the State of Lone Star v. Houston Alford

This is a criminal case. Houston Alford is charged with the theft of money. The definition of the elements of this crime will be explained to you later.

It is your solemn responsibility to determine if the State has proved its accusation beyond a reasonable doubt against Houston Alford. Your verdict must be based solely on the evidence, or lack of evidence, and the law.

The indictment is not evidence and is not to be considered by you as any proof of guilt.

It is the judge's responsibility to decide which laws apply to this case and to explain those laws to you. It is your responsibility to decide what the facts of this case may be and to apply the law to those facts. Thus, the province of the jury and the province of the court 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 if you understand how a trial is conducted.

At the beginning of the trial the attorneys will have an opportunity, if they wish, to make an opening statement. The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during the trial. What the lawyers say is not evidence, and you are not to consider it as such.

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 produced as evidence.

After the evidence has been presented, the attorneys will have the opportunity to make their final argument.

Following the arguments by the attorneys, the court will instruct you on the law applicable to the case.

You should not form any definite or fixed opinion on the merits of the case until you have heard all the evidence, the argument of the lawyers, and the instructions on the law by the judge. Until that time you should not discuss the case among yourselves.

During the course of the trial the court may take recesses, during which you will be permitted to separate and go about your personal affairs. During these recesses you will not discuss the case with anyone or permit anyone to say anything to you or in your presence about the case. If anyone attempts to say anything to you or in your presence about this case, tell him that you are on the jury trying the case and ask him to stop. If he persists, leave him at once and immediately report the matter to the bailiff, who will advise me.

The case must be tried by you only on the evidence presented during the trial in your presence and in the presence of the defendant, the attorneys, and the judge. Jurors must not conduct any investigation of their own. Accordingly, you must not visit any of the places described in the evidence, and you must not read nor listen to any reports about the case. Further, you must not discuss this case with any person and you must not speak with the attorneys, the witnesses, or the defendant about any subject until your deliberations are finished.

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 an objection is made you should not speculate on the reason why it is made; likewise, when an objection is sustained, or upheld, by me, you must not speculate on what might have occurred had the objection not been sustained, nor what a witness might have said had he been permitted to answer.

FINAL JURY INSTRUCTIONS

Members of the Jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

In this case, Houston Alford is accused of Grand Theft in the Second Degree.

Grand Theft in the Second Degree includes the lesser crimes of Grand Theft in the Third Degree, Petit Theft in the First Degree, and Petit Theft in the Second Degree.

Before you can find the defendant guilty of theft, the State must prove the following two elements beyond a reasonable doubt:

1. Houston Alford knowingly and unlawfully obtained, used, endeavored to obtain, or endeavored to use, the money of Burger Heaven, Incorporated.
2. He did so with intent to, either temporarily or permanently, deprive Burger Heaven of its right to the property or any benefit from it or to appropriate the property of Burger Heaven to Alford's own use.

If you find the defendant guilty of theft, you must determine by your verdict whether:

- a. The value of the property taken was \$20,000 or more but less than \$100,000.
- b. The value of the property taken was \$300 or more but less than \$20,000.
- c. The value of the property taken was less than \$300 but \$100 or more.
- d. The value of the property taken was less than \$100.

"Obtains or uses" means any manner of:

- (a) Taking or exercising control over property.
- (b) Making any unauthorized use, disposition, or transfer of property.
- (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise.
- (d)
 1. Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, deception; or
 2. Other conduct similar in nature.

"Endeavor" means to attempt or try.

"Property" means anything of value, and includes tangible or intangible personal property, including rights, privileges, interests and claims.

"Value" means:

The market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than \$300.

Amounts of value of separate properties, involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or several persons, may be totaled in determining the grade of the offense.

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence the State has the burden of proving the following two elements:

1. The crime with which the defendant is charged was committed.
2. The defendant is the person who committed the crime.

The defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced upon this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witness acted, as well as what he or she said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?

3. Was the witness honest and straightforward in answering the attorneys' questions?

4. Did the witness have some interest in how the case should be decided?

5. Does the witness's testimony agree with the other testimony and other evidence in the case?

6. Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?

7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?

8. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in court?

9. Was it proved that the witness had been convicted of a crime?

You may rely upon your own conclusion about the witnesses. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

The defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

There are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of the exhibits in evidence and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.

4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. Your duty is to determine if the defendant is guilty or not guilty, in accord with the law. It is the judge's job to determine what a proper sentence would be if the defendant is guilty.

6. Whatever verdict you render must be unanimous; that is, each juror must agree to the same verdict.

7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited for talking to a lawyer about his testimony.

8. Feelings of prejudice, bias, or sympathy are not legally reasonable doubts, and they should not be discussed by any of you in any way. Your verdict must be based on your views of the evidence and on the law contained in these instructions.

Deciding a proper verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Only one verdict may be returned as to the crime charged. This verdict must be unanimous; that is, all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary forms of verdict have been prepared for you. They are as follows (read verdict forms).

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreman. The foreman presides over your deliberations, like a chairman of a meeting. It is the foreman's job to sign and date the verdict forms when all of you have agreed on a verdict in this case. The foreman will bring the verdict back to the courtroom when you return. Either a man or a woman may be a foreman of the jury.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdicts. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have agreed to a constitution and to live by the law. No one of us has the right to violate rules we all share.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR DALLAS COUNTY
STATE OF LONE STAR
CRIMINAL DIVISION

Case No. 2000-7777

STATE OF FLORIDA)	
)	
V.)	GRAND THEFT
)	
HOUSTON ALFORD)	

We, the Jury, find as to the Defendant, Houston Alford, as follows:

- _____ Guilty of Grand Theft in the Second Degree,
(value of the money taken was \$20,000 or more);
- _____ Guilty of Grand Theft in the Third Degree,
(value of the money taken was more than \$300 but
less than \$20,000);
- _____ Guilty of Petit Theft in the First Degree,
(value of the money taken was less than \$300 but
\$100 or more);
- _____ Guilty of Petit Theft in the Second Degree,
(value of the money taken was under \$100);
- _____ Not Guilty.

So say we all.

Foreperson of Jury

Date