

The State of Texoma

Vs.

Jesse Schultz

2019 Collin County Bar Association
8th Grade Mock Trial Competition

STIPULATED FACTS:

On September 3, 2018, Jesse Schultz drove to his/her apartment complex, parked the car and walked to apartment 301. Jesse lives in apartment 401, exactly above apartment 301. Jesse entered apartment 301 and got into an encounter with Carter Newkirk, who lived in apartment 301. As a result of the encounter, Jesse shot Carter.

The prosecution will call 3 witnesses (not necessarily in this order):

1. Ashton Klink
2. Police Investigator Sam Hogan
3. Carter Newkirk

The defense will call 3 witnesses (in any order):

1. Jesse Schultz
2. Dakota Kinchloe
3. Quinn Burkhalter

The State and Defense will not be permitted to argue for a lesser included offense. The jury must determine whether this is an attempted murder or not. Proof must be beyond a reasonable doubt.

A layout of the apartment unit is provided. The layout is an accurate depiction of the unit as it was that night.

Witness Dakota Kinchloe is being paid the rate of \$300.00 per hour for his expert opinions in this case.

THE LAW APPLICABLE:

Jesse Shultz is charged with Attempted Murder. The state is required to prove the charged beyond a reasonable doubt. The law is from the Texoma Penal Code as follows:

Sec. 22.01. Murder

(a) A person commits a murder if he intentionally, knowingly, or recklessly or with criminal negligence causes the death of an individual

(1) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(b) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

Sec. 15.01. Criminal Attempt.

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) An offense under this section is one category lower than the offense attempted.

The Defense claims self-defense. **The Prosecution must prove** the defendant did not act in self-defense beyond a reasonable doubt.

Self-Defense. You are instructed that a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

Theft is a crime of moral turpitude and is admissible to impeach a witness.

SWORN STATEMENT OF ASHTON KLINK

My name is Ashton Klink. I am 38 years old and I witnessed some of the incident made the basis of this case. I was present the night of the incident and the afternoon when Jesse's car was towed. I live in unit 327, directly across the courtyard from unit 301.

On about August 25th, 2018, at about 3:00 in the afternoon, I was pulling into the parking garage. I noticed Jesse in the garage and somewhat puzzled. Jesse explained that he/she had come home early in the morning and parked right by the breezeway after getting off work and knew he/she was one level below his/her normal parking because Jesse was going to hang out with some friends. Well the spot right by the breezeway is marked for handicapped parking. Jesse claimed to be in a hurry and didn't plan to stay long. While there, Carter Newkirk came into the garage. When Carter found out that Jesse had parked in the handicapped spot, Carter made the comment that he/she had it towed because it was reserved for people with disabilities and Jesse did not qualify. Jesse was very unhappy especially when Carter said he/she hoped it costs a lot of money to get out of the tow yard. Jesse said something along the lines of do you know who I am or you shouldn't mess with people you don't know. Carter said park in a normal space and quit being lazy. I had to step in between them to keep a fist fight from happening.

I then drove Jesse to the tow yard to get the car. When we got back from the tow yard, Jesse used a hammer and nailed the bill from the tow yard to the front door of Carter's apartment and wrote on the bill in big red letters "Either you owe me – or I owe you." I would take that as a threat. I was a little concerned knowing Jesse was our security officer. Jesse seems to be a hot head.

On the night of the shooting incident, I was playing video games and just hanging out. I heard noise coming from across the courtyard. I looked through my kitchen window and saw a police officer in full uniform entering unit 301. The officer seemed to use a key to enter. I did not have the best view. I was curious because I knew Carter lived there. I watched and within seconds I heard a loud bang and saw a flash. Then I saw the officer come out, it was Jesse. At first I

thought, wow, Jesse can hold a grudge. Then I saw that Jesse was on a cell phone and somewhat frantic.

I did not really hear the conversation between them prior to the shooting. I did hear someone shout. It seemed that Jesse was immediately remorseful, but who knows. I would not consider myself to be friends with either of them. I can see how this was not intentional. But, I also think maybe it was. I don't know.

I do have prior conviction for theft. That should not affect anything, I did my time.

Signed this 11th day of September, 2018.



Ashton Klink

SWORN STATEMENT OF SAM HOGAN

My name is Sam Hogan. I am 40 years old and a certified peace officer for the city of Republic. I was assigned the task of investigating the incident involving Carter Newkirk and Jesse Shultz.

Early in the morning of September 3, 2018, at about 2:30 am, I was called to the scene of a shooting. I was told it was an "officer involved shooting". Those are always different. When I arrived on the scene, I found that while Jesse Schultz was an officer on my department with the Republic Police Department, Jesse was not on duty at the time. Jesse's 12 hour shift had just ended at 2:00 am. For reasons that follow, fatigue may have been a factor.

According to my investigation, the Augsburg Apartments are a multi-level apartment complex. What seems to be unique about the apartments is that there is a parking garage attached to the complex. The garage is the same height as the complex. Each tenant is allowed to park his or her vehicle on the same level as the apartment and use a walkway to the apartment without needing to climb stairs. Jesse Schultz lived in unit 401. The victim Carter Newkirk lived in unit 301, exactly one level below Jesse. My investigation also revealed that each apartment unit was furnished with almost identical furniture. Once inside an apartment, it would be very difficult to tell units apart.

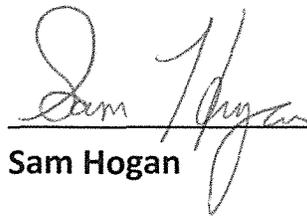
My investigation revealed that Jesse simply went to the wrong apartment and entered. Apparently there were some issues with the keys in the apartment complex. Sometimes they worked, sometimes they didn't. It is not clear whether or not the lock to unit 301 was engaged at the time Jesse entered it. Because Jesse is the security officer for the Augsburg Apartments, Jesse had a master key. It allowed Jesse's master key to open any door. Jesse claimed the door was ajar when he/she arrived and, therefore, the master key was not necessary. However, when we inventoried Jesse's items, including the key ring, only the master key was found. That key would have opened any door in the complex, whether the door was closed or not.

Jesse entered the apartment, and was confronted by the Carter, who lived in the apartment. Carter was shot by Jesse and that brings us here. Jesse claimed to have parked on the wrong level and just was not paying attention after getting off a twelve hour shift. That could have been the case, but so many mistakes would have had to occur to do this. Jesse denies the car towing incident had anything to do with the incident.

I was Jesse's field training officer when Jesse joined our department. I had come to know Jesse very well and it was difficult to do this investigation and keep an unbiased attitude. While I believe that the actions of Jesse may be interpreted to be an act of self-defense, I don't think so. I think this was clearly an attempted murder. Jesse, even though mistaken about the apartment unit, had no reason to use deadly force in the situation. If Jesse entered the apartment and noticed someone was in it, Jesse should have and could have backed out of the apartment and waited outside and called for police back-up or assistance. Jesse alone put himself/herself in the situation and resulted in Carter being shot.

I was a little concerned also because I was the sergeant on duty on the night of September 2 and early morning September 3. Jesse just seemed to be a little agitated and irritable at work. It seemed like something was bothering Jesse. I did know that Carter had filed an internal affairs complaint earlier in the day about the towing incident, but I am not sure if that played a role in the agitation. I was in charge of investigation that complaint also. I informed Jesse of the complaint when his/her shift had ended on September 2nd, but before Jesse worked the DWI task force.

Signed this 10th day of October, 2018.



Sam Hogan

SWORN STATEMENT OF CARTER NEWKIRK

My name is Carter Newkirk. I am 26 years old and have never been convicted of a crime.

In the early morning hours of September 3, 2018, I was sleeping in my apartment located in the Augsburg Apartments, located at 111 Bundes Place, City of Republic, State of Texoma. I was awakened by noise coming from the entry way of the apartment. I got up to see what was going on and saw someone in the doorway. I approached the person and was shot. I had a baseball bat in my hand at the time.

Prior to getting shot, I was having trouble with getting my door to close all the way. The door only locks when it is all the way shut. It reminded me of a hotel room security setting. The keys, from time to time, would need to be replaced if the magnetic stripe that contained the mechanism for unlocking the door got corrupted or something. I believe I closed the door and it locked. It is possible that the door did not lock. I did not set the inside deadbolt latch. I probably should have.

When I heard the door slam shut, I woke up and actually grabbed a baseball bat that I keep by my bed. We have had some burglaries in the complex, and I just needed to make sure I was safe. When I heard the door, I came into the dining area and was shot. I did have the bat in my hand and raised over my head. All of the lights were out and it was very dark. The only light the apartment was receiving was from the outside patio. When I got out of the bed, I did holler at the person in the doorway and I said, "get out of my house, I have a weapon." When I saw the person in the doorway, I did walk quickly towards the person from the bedroom. I was half asleep still. Then I got shot. I don't remember much afterwards.

I later learned that Jesse Shultz was the person that shot me. I have known Jesse for some time just from being in the same apartment complex. We never socialized. Prior to shooting me, Jesse did not say a word. Apparently, Jesse just entered my apartment, without notice and shot me. If Jesse had just taken time

to turn on the light or if Jesse had just backed out when he/she thought there was someone in his/her apartment. I don't think the appropriate reaction was to shoot first and ask questions later.

There was also an incident about 1 week prior to the shooting. Jesse had parked a vehicle in the handicapped parking spot for the 3rd level, and I had the vehicle towed. I had a temporary handicapped placard due to a knee surgery. Jesse was very unhappy with me. We exchanged words and it ended with Jesse telling me "do you know who I am?" I have never been in trouble with the law before. I did file a complaint with the Republic Police Department because of my incident. I felt Jesse was wrong in parking in a handicap spot and the attitude afterwards was also very unprofessional. I didn't know I would get shot for doing it.

Signed this 10th day of September, 2018.



Carter Newkirk

SWORN STATEMENT OF JESSE SCHULTZ

My name is Jesse Schultz, I am 23 years old and I have been a police officer with the city of Republic for about one year. I am currently suspended.

In the early morning hours of September 3, 2018, I was involved in a shooting with Carter Newkirk. We work 12 hour shifts, either 6am-6pm or 6pm-6am, switching every 8 weeks. We work the Panama Schedule, meaning I work Monday and Tuesday and I am off Wednesday and Thursday, then I work Friday, Saturday and Sunday. The next week we do the opposite, meaning we only work Wednesday and Thursday and are supposed to be off the rest of the week. A lot of us newly hired people will also put in extra shifts working DWI task force. I had worked my regular shift on Sunday, September 2nd and got off at 6 pm. I worked a task force from 8 pm to 2 am. I was pretty tired when I got off on September 3rd at 2:00 am.

I drove to my apartment complex located in the Augsburg Apartments and parked where I normally would and proceeded to my apartment number 401. When I got to the unit, I noticed the door was ajar and not closed all the way. That surprised me so I proceeded in cautiously. I sort of kicked open the front door and entered. After entering the apartment, I confronted someone coming out of what I thought was my bedroom with what appeared to be a weapon in his or her hand. I yelled, "drop it - Police". The person came toward me and I pulled my weapon and fired one time apparently injuring Carter.

After the shooting, I turned the light on and saw that this was not my apartment. I immediately radioed for help.

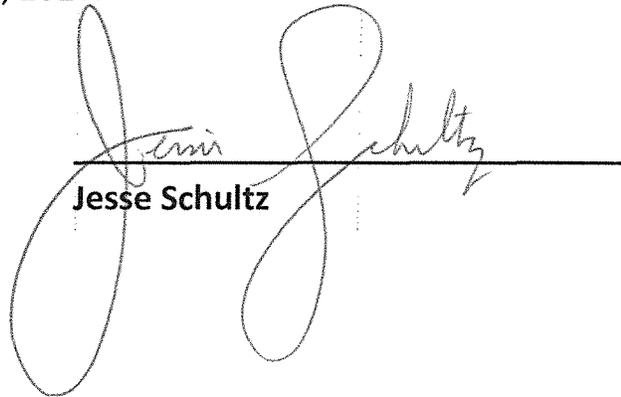
The prior run-in with Carter when my vehicle was towed was no big deal. The police department has a relationship with the tow operator and they did not charge me to retrieve my towed vehicle. I was mad at the time, but was able to get over it. I did not hold a grudge against Carter beyond that day. My car had only been in that spot for a few hours though. I think Carter knew it was my car and had it towed just because he/she wanted to prove some point. Whatever.

When I first got to the apartment, I noticed nothing out of the ordinary other than the door not being closed. There has been some discussion about whether or not I used a key to enter and I just don't think I did. The door was not locked. Even if it had been, I have a master key. The regular key I had for my apartment had quit working and I had not bothered to replace it because I had a master key since I was also the courtesy officer for the complex. A courtesy officer is given free rent to deal with complaints and security issues that arise in a complex. Most apartment complexes employ the services of a courtesy officer.

I have been the subject of three internal affairs complaints alleging excessive force. I have been exonerated on one of the three. One complaint was sustained and I was given a week off without pay as punishment. I was accused of hitting a suspect that I had to chase to arrest. The third incident is the shooting of Carter. It has not been resolved. The complaint about the towing incident was also sustained with a private reprimand. It alleged unprofessional conduct, but not anything serious.

I believe I did everything I could have done to avoid trouble on this night.

Signed this 8th day of September, 2018.



Jesse Schultz

SWORN STATEMENT OF DAKOTA KINCHLOE

My name is Dakota Kincheloe. I am a retired police officer. I spent over 40 years in law enforcement including 15 years as a detective and 5 years in internal affairs. I consider myself an expert in police use of force issues.

I was hired by the defense in this case to review the actions of Jesse Schultz in the shooting of Carter Newkirk. I reviewed the police report and interviewed as many people as I could. The victim, Carter Newkirk, refused to talk to me. After considering the interviews, and the police report and the map of the apartment complex, I believe this is simply a case of a mistake that almost became fatal.

Jesse drove home that night after a long shift with the police department. The Augsburg apartment complex has a parking garage attached to it so that each person that lives on the 1st floor parks on the first level and each resident of the 2nd floor parks on the 2nd level and so on. In reviewing the parking levels, they are not very clearly marked for a person to know what level they may have parked on. There is a huge number on one of the support beams in the center of the garage level, but other than that, the signage is inadequate.

When a police officer is confronted by a suspect, the officer is taught to diffuse the situation as best he or she can. Police protocol teaches an officer is in fear for his life; he can use deadly force to thwart the threat. I believe if an officer is confronted by a suspect carrying a baseball bat and charging toward him or her, I believe deadly force is justified. The officer must have the understanding in that situation to stop the threat with deadly force if necessary. In this case, deadly force was necessary.

In addition, if Officer Schultz arrived at the apartment unit and noticed his/her unit door was ajar when it should have been locked, then Schultz would have been entering with a heightened awareness that something was not right and as such the incident and self-defense claim would have been even more justified.

I have been asked to opine on whether there was anything different that Jesse could have done. I guess the simplest answer would be to get out on the right level. This apartment was located exactly one floor down from Jesse's. There was a red floor mat in front of Carter's apartment that did not exist at Jesse's, but other than that and the apartment number, the apartments were identical. I am not sure why Jesse used the master key to enter his/her apartment. It may not have made a difference if the automatic locking feature was not working anyway, but we will never know.

Signed this 10th day of January, 2019.

Dakota Kinchloe
Dakota Kinchloe

SWORN STATEMENT OF QUINN BURKHALTER

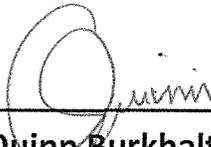
My name is Quinn Burkhalter. I am 38 years old. I went to trades school to become a mechanic and I am employed by the Augsburg Apartment complex as a maintenance man part time. I get a discount on my rent by fixing things at the complex that break.

On September 3rd, early in the morning, I was called about the shooting at Carter's apartment. I actually had to clean up the mess once the police cleared the scene. When I arrived at the apartment, there was a pool of blood located right at the opening to the bedroom. The bedroom did not have a door on it. I do not know what happened.

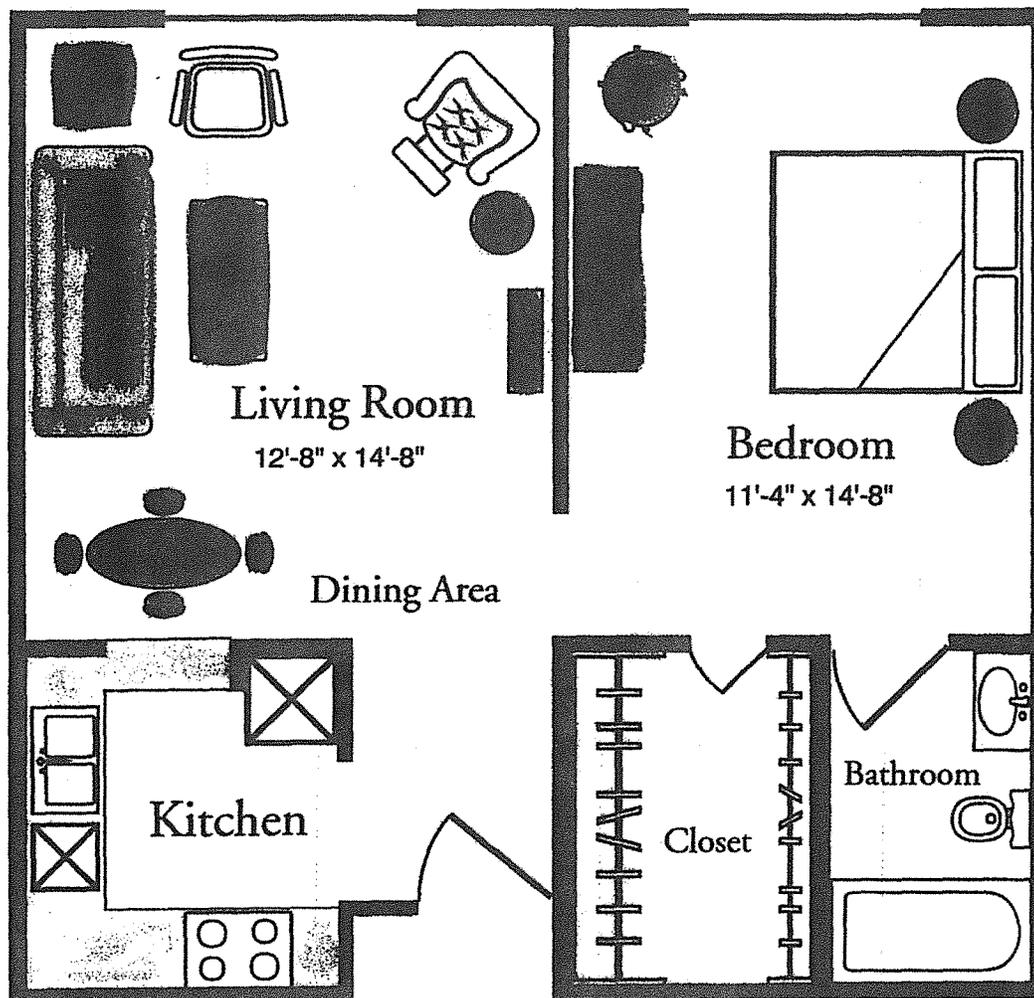
I am familiar with the front door, however. The door to Carter's apartment had a red floor mat. It was very distinct from the other apartments. I guess if you were tired and not paying attention you would not notice. I had also dealt with the door on Carter's apartment. We were having trouble getting it to automatically close. I worked a ticket on that door on August 30th and it was closing when I left. I also checked it again on September 3rd and it was closing. When the door closed, it locked automatically. However, if it was not allowed to close on its own, the door could shut but not engage the lock.

Our complex had hired Officer Schultz as its courtesy officer. Because of this, Schultz was given a master key. I did not know that Schultz was no longer using the regular unit 401 key to enter his/her apartment. I should have been told and I would have made the regular key useable again. If Schultz had not been using the master key, then entering unit 301 could not have occurred accidentally unless it had been left ajar. I know that is what Schultz' story is but I have to believe I had the door working properly and if it was left ajar, that would be Carter's fault.

Signed this 15th day of September, 2018.



Quinn Burkhalter



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