



Mastering Trial Advocacy: Cases, Problems, &
Exercises, 1st Edition

State v. Worthington

Cases and Materials

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IN THE CIRCUIT COURT OF THE 1st JUDICIAL CIRCUIT
CALUSA COUNTY

Circuit Court No. 00139218

State	Petition 59730-06
v.	
Chad Worthington	

To The HONORABLE JUDGE OF THIS COURT:

Your Petitioner, the undersigned Assistant State Attorney, respectfully represents that Chad Worthington, committed an offense within the intent and under the meaning of State statute § 316.1934, to wit: the Chad Worthington on or about November 11, 20XX-1, in the city of Pelican Bay, Calusa County, did drive or have under physical control a motor vehicle, while being under the influence of alcoholic beverages or controlled substances to the extent that his normal faculties were impaired, contrary to State Statute § 316.1934.

Wherefore, the petitioner under oath and good faith files this petition based on facts and information which the petitioner believes to be true and prays that process may issue in due course to bring Chad Worthington before this court to be dealt with according to law.

Dated this 1st day of December, 20XX-1.

Emilia Van Oosting
Larry Emilia Van Oosting
Assistant State Attorney

Sworn to before me this 1st day of December A.D., 20XX-1.

Wanda W. Wonder
Wanda W. Wonder
Notary Public

STIPULATIONS APPROVED BY BOTH SIDES

It is hereby stipulated between the parties with the express consent of the accused that the following facts are true:

1. Defendant Chad Worthington has no prior criminal record except for an arrest 7 years ago for D.W.I., to which he pled guilty.
2. The statement by the defendant was given to Sgt. William Marshall, officer in charge of Internal Investigations of the police department, two days after the incident when the defendant came to police headquarters to complain of his arrest. The statement had already been prepared but was signed by the defendant in Sgt. Marshall's presence.

Police Officer's Report
Pelican Bay Police Department

OFFENSE: Driving While Intoxicated **ARRESTED:** Chad Worthington
LOCATION: On Central Ave. 1st to 58th Ave. N. **AGE:** 39 **SEX:** M
TIME OCCURRED: 11 November 20XX-1, 1:15 A.M. **HEIGHT:** 6'1 **WGHT:** 185

STATEMENT OF ARRESTING OFFICER:

My name is Sean O'Connor. I am a police officer with the Pelican Bay Police Department. I am 29 years old. I have completed 3 ½ years of college, going primarily to night school. I have been with the Pelican Bay Police Department for 5 years.

On November 11, 20XX-1, I was finishing up a double shift I had been working for a friend. We had a lot of bad weather and all of us had been working doubles to get things under control. When returning to the station I saw a car stopped at a red light, headed eastbound on Central Avenue. When the light turned green, the car remained stationary for several seconds then abruptly accelerated. As the car proceeded eastbound, it swerved from the curb lane to the inside lane and back. As the car got near the next intersection at 58th Avenue South, where the light was red, it continued going without decelerating and braked hard at the last minute, skidding to a stop,. When the car took off again, it began swerving, forcing one car off the road. into a nearby cemetery.

At this point, I put my lights and siren on and pulled the defendant over. I asked the defendant to exit his car and as he did, he stumbled, leaning on the car door for support. I asked him for his driver's license which he finally gave me after passing over it twice. I noticed a moderate smell of alcohol on his breath. He was slurring his speech and his eyes were bloodshot. I administered the physical sobriety test. On the balance test he swayed, on the finger to nose test he hit his cheek with his left hand and the bridge of his nose with his right hand. On the walking test he stumbled and fell. I arrested the defendant and took him to the station where he refused to take a breathalyzer test. After the arrest, I conducted an inventory of the car and found an empty can of Beck's NA on the floorboard of the front seat and a half empty bottle of colt .44 malt liquor in the cup holder.

Sean O'Connor
Sean O'Connor

STATEMENT OF Chad Worthington:

My name is Chad Worthington. I am 29 years old. I live at 4512 – 6th Avenue North. I am not married. I work for the Pelican Bay Electric Company as a lineman, my official job title is electrical technician, but really I hang wires. On November 10th, I worked until about 11:30 because there had been some outages due to the tropical storm that evening. After work, myself and some of the guys went to the Tunney Tavern to have a beer after work. The Tunney Tavern is located about 20 minutes from my home and is a special place for me because I am a marine. Served two combat tours before I came back and joined the electric company full time on their “hire a veteran” plan.

I only had one beer, it was some kind of german wheat beer, but I don’t remember the name. I know I didn’t stay long, maybe 20 minutes, because I had to get up early the next morning. While I was stopped at a red light, I noticed there was a giant spider running across the inside window of my car. I wasn’t sure if it was real or not because sometimes I have flashbacks to combat, but I think it was. Scared the crap out of me because I am highly allergic to spider bites - that is why I had to get out of the marines.

I tried to smash it against the window but I couldn’t get to it. I was in a hurry to get home because I was rather tired, having been up all night getting the power back on. I know it wasn’t the smartest thing to do, but I kept driving while trying to kill the spider. I guess I wasn’t paying much attention to my driving because I heard a siren behind me and was pulled over. I had a hard time doing the things they asked me to do for the physical sobriety test. I tried to explain that I just wasn’t very coordinated and never was very athletic, but they arrested me anyway. I also tried to tell them how tired I was, but once the cop found out I was a marine he let me have it. Guess he couldn’t get in the Corps. Semper Fi!

Signed: Chad Worthington

I witnessed above signature this date, November 13, 20XX-1.

William Marshall

William Marshall
Desk Sergeant

WITNESS STATEMENT OF HAROLD FOX

November 17, 20XX-1.

My name is Harold Fox. I am 43 years old. I live at 4227 Glen Isle Drive, Pelican Bay. I work for the Pelican Bay Electric Company. I'm a supervisor and Chad Worthington is part of my crew. I remember November 10. We had to work because we had very severe lightning as part of a tropical storm that blew through our area. Several sections of our power grid out. Our shift went off at about 11:30 and we all went to Tunney Tavern. Most of us stayed 'till after 1:00AM. Chad left early, though. As a matter of fact, he only stayed about 45 minutes then left. He said he had to get up early in the morning. I don't remember if he drank anything or not since he was sitting at another table. But if he did, he couldn't have had much, he was only there about 30-45 minutes. I'm sure he couldn't have been drunk. The next time I saw Chad he told me he had been arrested for drunken driving, so that is why I came down to give my statement.

Signed: Harold Fox

Sworn to before me this 18th day of November 200X-1.

Wanda W. Wonder
Notary Public

STATE v. Worthington
Jury Instructions

You must have already been informed that it is the duty of the judge to instruct the jury on the law that the jury must follow in deciding the case.

[2.02] STATEMENT OF CHARGE

The defendant, Chad Worthington, has been accused of the crime of driving while under the influence.

[2.03] PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

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 and the Information 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, 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.

[2.04] WEIGHING THE EVIDENCE

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 witnesses acted, as well as what they 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' testimony agree with the other testimony and other evidence in the case?

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

[2.05] RULES FOR DELIBERATION

These 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 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 the verdict you render must be unanimous, that is , each juror must agree to the same verdict.
7. 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.

[2.07] CAUTIONARY INSTRUCTIONS

Deciding the verdict in this case is exclusively your job. I cannot participate in that decision in any way. You will disregard anything that I may say or do during the trial that may make you think I prefer one verdict over another.

Members of the Jury, you have heard any seen all the evidence which will be introduced in this case. You have listened carefully to the arguments of lawyers and I now direct your attention to the second part of the instructions which I am required to give you, and which, I remind you, you are required to follow.

I will now instruct you on the proof necessary to prove the crime of driving while under the influence.

Before you can find the defendant guilty of Driving or Being in Actual Physical Control of a Vehicle, While Under the Influence of (alcoholic beverages) when affected to the extent that his normal faculties are impaired, the State must prove the following three (3) elements:

Elements

1. Chad Worthington drove or was in physical control of a vehicle in Calusa County.
2. He was under the influence of alcoholic beverages.
3. He was affected to the extent that his normal faculties were impaired.

Definitions

1. “Normal faculties” mean those faculties of a person, such as the ability to walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.
2. “Actual physical control of a vehicle” means the defendant must be physically in the vehicle. Defendant must have had the capability and power to dominate, direct or regulate the vehicle, regardless of whether or not he is exercising that capability or power at the time of the alleged offense.

Optional Definitions

1. “Vehicle” is any device, in, upon or by which any person or property is, or maybe, transported or drawn upon a highway, except bicycles or “mopeds” or devices used exclusively upon stationary rails or tracks.
2. “Alcoholic beverages” are considered to be beer, wine, whiskey, and all other alcoholic beverages of any kind and description which are made for human consumption.

[2.09] SUBMITTING CASE TO JURY

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 form 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 foreman of the jury.

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

Tab B - State v. Worthington (DUI)

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must 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.

Members of the Jury, you will now retire and consider your verdict. Mr. Bailiff, retire the jury to the jury room.