

PART V
SUPREME COURT OF THE
STATE OF NEW YORK
CRIMINAL DIVISION

PEOPLE OF THE STATE OF NEW YORK)	
)	Case No.:
v.)	MT-2003
)	
C.C. RIDER, Defendant)	

STATEMENT STIPULATED OF FACTS*

It was a chilly Wednesday morning, October 9, 2002 in the slightly dilapidated plant of Domeboro High School. Between second and third periods, Mr. Harry Schultz, the oldest teacher on staff, was on his way from his classroom to the Teacher's Lounge on the third floor. He was walking close to the walls both for his own safety (he had been experiencing a touch of vertigo recently) and to avoid the hordes of teenagers rushing up and down the corridor trying to get to their next class before the bell rang when failing to see the emergency bell on the wall ahead of him, he walked straight into it and banged his head, thereby setting off the shrill sounds of an unscheduled fire alarm. Mr. Schultz, who is 6'4" in height, immediately crumpled to the floor, seeing stars. When some students offered assistance, Mr. Schultz, in his confused state, yelled "I'm okay, leave me alone. Get out of the building!" As the hallway cleared, he struggled to his feet, only to collapse again.

The normal fire drill procedure at Domeboro High School requires all teachers to halt their classwork immediately and instruct their students to exit calmly, in pairs, by the staircase closest to their classrooms. Ms. Lightning, Ms. Strahan, Mr. Price, Mr. Mineo, all the other teachers and the security guard had whistles for this purpose and they all blew them. They expected chaos to erupt and they were not disappointed; it usually did at these times, no matter how often Vice Principal Scottie Buber called for orderliness. Difficulties were further compounded because the tardy bell for next class was not scheduled to ring for three more minutes when the fire alarm sounded, so that these teachers had only a handful of students to escort out and watch over. The halls were still crowded with students, many of them panicked.

Two students, C.C. Rider and pal Benya Minton, jumped down the stairs at jet speed, having been about to enter Ms. Lightning's English class on the third floor. They could hear her yelling from above them, "Slow and orderly! Calmly and quietly!" but they raced ahead anyway. When they exited the building, there was Principal Steven Carpenter out front yelling on a big bullhorn. Vice Principal Buber was at his side and both of them were trying to account for all the students, teachers and aides.

Finally, Ms. Lightning also left the building and approached the principal and vice principal. By then, the lawn and courtyard were full of milling, laughing students, frustrated teachers and the entire cafeteria staff enjoying a break. As Ms. Lily Lightning approached, she heard Principal Carpenter say to Vice Principal Buber: "Scottie, what do you mean this drill was not scheduled? We schedule one a month, we have not had one yet this month!" "Excuse me, Steven," said Lily, "but I don't see Harry Schultz. Is he out here?"

Carpenter, Lily and Buber turned 360°, counting off on their fingers all the teachers they recognized on the expansive front grounds. While they were satisfied that they saw most of the student body and all the other staff members pouring out of the building, with more following them, Lily was right, Schultz was not among them.

"Oh no!" cried Principal Carpenter. "Where is Harry?"

"He had European history in Room 314 last period, Steven," said Mr. Buber.

Principal Carpenter answered him, "We're going to have to go in there and get him. But is there a fire? If this drill wasn't scheduled, I'm confused. IS SOMETHING BURNING?!!!!!"

As this conversation was taking place, C.C. and Benya happened to be standing not far behind these three school officials. When they heard it, they looked at each other and, in an unspoken agreement to be the heroes of the day, rushed back into the building to find the aging Harry Schultz, a teacher they both admired, and bring him to safety. They were both wearing upscale sneakers and knew no fear.

However, the staircases were still thronged with hordes of kids rushing down the stairs. As C.C., with Benya close behind, tore up the nearest staircase, head down and feet rushing, C.C. bumped into Purify Appleton, a senior, who was descending with other classmates from the "Pit," Mr. Mineo's class of notorious underachievers. "Hey, watch it!" Purify yelled at C.C.. "Watch where you're going, punkface!"

"Shut up, we don't have time, we're trying to find Mr. Schultz," C.C. replied. "Say what?" Purify exclaimed. "You don't have the time to have manners? Where did you grow up – in a barn? Who cares about that old goat?" With this, Purify grabbed C.C.'s arm while the Pit classmates (who were known within Domeboro as the "Pit Bulls") surrounded the would-be hero. C.C., whose means of egress were now completely blocked, flung out or struck blindly, C.C.'s fist landing squarely on Purify's prominent nose, knocking the latter's eyeglasses to the floor.

"OWWWW. That's it. I'm gonna kill this kid!" Purify shouted, groping blindly on the stairs for the glasses. At that moment, Benya grabbed C.C. from behind and down the stairs, whispering, "Come on, we can go up another staircase and find the old man." Luckily for them, they were so swift in escaping retaliation that neither Purify nor any of the concerned Pit Bulls were able to lay a hand on either of them.

Security Guard Lamarr, who had witnessed most of the incident from the landing above, remained unnoticed until deciding to hurry all of the remaining students down the stairs and out of the building.

Surrounded by the other Pit Bulls, Purify emerged from the building looking, sounding and fuming like a blinded bull, blood streaming from the bridge of the once-proud nose.

"OH NO!!" cried Principal Carpenter. "What is THIS now?!?!?!!!"

The classmates all yelled in unison, "Principal Carpenter! C.C. punched Purify in the face!"

Principal Carpenter stroked his face in woe, having reason to believe that there was no fire in the building but now having to face a new crisis. Turning to Purify, he put a kindly hand on his shoulder and asked, "Son, is this true?"

"Yes, sir," Purify looked at the principal beseechingly, "we were just following orders coming down the stairs when that little mutt ran into me and then punched me. We thought there was a real fire!"

Half an hour later, some order was restored to Domeboro High School. The fire trucks came and Domeboro Fire Chief Manitou informed the principal that there was no fire anywhere in the building and gave the "all clear" signal which would allow the teachers to return to class with their students. The chief made it clear that it was a violation of regulations to have students in the building before the "all clear" was sounded. Prior to the arrival of the Fire Department, C.C. and Benya found Mr. Schultz lying in a daze underneath the emergency fire alarm bell and, assisted by Security Guard Lamarr, helped him to the Infirmary on the ground floor. Nurse Bagagog dispatched Mr. Schultz forthwith to Mercy General Hospital to be X-rayed for a possible concussion.

Meanwhile, Purify was still surrounded by classmates and declined to ride in the same ambulance as Schultz. Purify asked Nurse Bagagog to treat the injuries then and there and "let me go." "Well, I don't know," Nurse Bagagog answered, "this could prove troublesome. You seem to need sutures for this laceration, and I think you should have your cheekbone X-rayed. It might have been damaged and you might get a black eye if you don't. Why don't you just go in the ambulance and let them check you over?" Purify again declined emergency hospital treatment. "Just fix me up, nurse."

Calling upon earliest field training, Nurse Bagagog cleaned and disinfected the wound. She then used a butterfly strip to close the gash on the upper bridge of Purify's nose. When the bandaging was finished, Purify took some Tylenol and left to return to class, minus his broken eye glasses, of course.

Principal Carpenter still had issues to face, however. He was concerned not only about the welfare of Mr. Schultz, his colleague and the bane of his existence, but Purify certainly seemed to him to be seriously injured requiring an investigation. Buber agreed at once and called for Lamarr, the school's lone security officer, to hold C.C. for questioning.

As stated above, Security Guard Lamarr had found C.C. and Benya trying to revive Mr. Schultz and immediately escorted all three of them to the Infirmary. After Mr. Schultz was taken to the hospital by ambulance, Lamarr went with C.C. and Benya to the principal's office. In response to Vice Principal Buber's questioning, Guard Lamarr replied, "Oh yes, sir, these kids from the Pit were going DOWN the UP staircase when C.C. here was just screaming to get by. These Pit Bulls are always causing mischief on the staircase. When I heard the fire alarm sound, I tried to direct all students to the proper stairways for orderly evacuation of the building, but those Pit Bulls just don't listen. I'm sure they started all this. When I found C.C. and Benya, they were tending to Mr. Schultz as if he were their kin."

This did not prevent C.C. from getting a good going-over by both the principal and vice principal. They debated between themselves whether to hold him and contact the police to arrest C.C. on charges of assault or let C.C. off with a caution. It appeared that if Purify felt well enough to return to class, this all might blow over. Dismissed, C.C. ran out of the office. Immediately thereafter, Vice Principal Buber had second thoughts and persuaded Principal Carpenter to alert the local law enforcement authorities.

The following Monday, C.C. was arrested and charged with Third Degree Assault by the Domeboro District Attorney.

By the time C.C. hired defense counsel and all the motions were filed, which took several months, Purify had unexpectedly dropped out of school and relocated temporarily to London to produce a second hip-hop album for his cousin and close friend, the up-and-coming recording artist Mary J. Bly. After their first collaboration, *The 322*, named after Lily's classroom, went platinum.

Shortly after arriving in London, Purify learned that Sir Elton John had agreed to play piano and sing on one of Mary's tracks. Purify was so excited to meet and work with Sir Elton that on that very day,

while walking from the hotel to the recording studio, Purify stepped off the curb to cross the Strand and, thinking only about Sir Elton, looked to the LEFT instead of the RIGHT for oncoming traffic, the way one does in the United States. Sadly, Purify was suddenly struck by a red double-decker bus approaching from the opposite direction. Although the injuries were not fatal, Purify is still confined 'in hospital' in London at the time of trial.

The People have charged defendant C.C. Rider with Assault in the Third Degree under New York Penal Law § 120.00(1), claiming that the defendant intentionally caused physical injury to the complainant. Assault in the Third Degree is a Class A Misdemeanor.

The defendant, who has no prior criminal record, is an eligible youth within the meaning of the Youthful Offender Statute and is proceeding to a single judge trial.

The Court instructs both the Defendant and the People that they cannot wait for Purify to recover and appear as a complaining witness because the "speedy trial" provisions of the Criminal Procedure Law, Section 30.30, require the case to be tried forthwith or be dismissed.

The defendant has entered a plea of not guilty to this charge based on: (1) the legal ground that the People cannot prove all of the elements of the offense beyond a reasonable doubt in the absence of the complainant, and (2) justification.

WITNESSES

FOR THE PROSECUTION

SCOTTIE BUBER
Vice Principal
Domeboro High School

CASEY/I RAIMUNDI
Friend of Purify Appleton
Student
Domeboro High School

OCTAVIO/A BELEN BAGAGOG, LPN
School Nurse
Domeboro High School

FOR THE DEFENSE

C.C. RIDER
Defendant
Student
Domeboro High School

BENYA MINTON
Friend of C.C. Rider
Student
Domeboro High School

CODY/I LAMARR
Security Guard
Domeboro High School

*This case is hypothetical and intended to be used for educational purposes only. Any resemblance between fictitious persons, facts, and circumstances described in this mock trial and television or film characters, real persons, facts, and circumstances is coincidental.

STIPULATIONS

1. George County, for the purpose of this mock trial, is a county in New York State.
2. The police officer that made the arrest had no personal knowledge of any of the alleged events and has been excused from testifying at this trial.
3. Witness statements are sworn and notarized.
4. The photo of the broken glasses is deemed to be an authentic representation of the glasses worn by Purify Appleton on October 9, 2002. All objections regarding chain of custody have been made and decided in favor of the prosecution and the glasses are eligible for use as evidence with the proper foundation.
5. All other items of evidence are eligible for use at trial following proper procedures for identification and submission.
6. No other physical exhibits, aside from those provided, can be introduced at trial.
7. All witnesses may be portrayed by either sex.
8. All other applicable motions have been made and decided. The constitutionality of all statements is not in question. All other evidentiary questions are preserved for the court. Although the charge is a misdemeanor, for reasons of judicial economy, the case is ready for trial before the Criminal Division of the Supreme Court of the State of New York.

Affidavit of Scottie Buber Witness for the Prosecution

My name is Scottie Buber and I live at 2501 Old Town Road, Domeboro, New York. I am employed as the vice principal of Domeboro High School. My immediate supervisor is Steven Carpenter, principal. I have served in this position for five years; prior to that I taught both English and history for a number of years. As vice principal, I am responsible for the smooth administration of the school, its physical plant, its budget, the student curriculum and the hiring of properly qualified teachers and staff. I do admit that in the past couple of years, our jobs have been made more difficult because of the rebellious attitudes that students have today, and their abysmal lack of respect for authority. I also find that parents are not involved enough in their children's lives, they leave far too much parenting to the schools.

One additional duty I am proud to hold as vice principal is to be first point of contact for the myriad crises that arise here every week, and to deal with them efficiently, thereby shielding Principal Carpenter, and not involving him until it becomes absolutely necessary. These "crises" come in many forms: cheerleaders practicing semi-pornographic dance routines, students showing signs of drug abuse or hiding drugs in their lockers that they are selling to other students, our endless vigilance against weapons inside the school building, complaints against unfair grading, and the ubiquitous fighting that goes on, much of it physical. I have had to deal closely with local law enforcement because of student behavior on numerous occasions, much to my dismay. I do not like to see our students questioned or arrested, but I believe that they must be accountable for their misbehavior. My record as an administrator is untarnished, with one possible exception: when I notified authorities about "Tiny" Wallace, a new transfer student I suspected of using marijuana because her eyes were always red. It turned out after the police interrogation that, although only a teenager, Tiny suffered from glaucoma and was smoking the drug under prescription from her doctor in California for relief of her symptoms. I know now that this is a legally acceptable and medically recognized use for marijuana in that state. Ultimately, the charges against Tiny were dropped. It was not my fault that she spent 15 hours in jail until the matter could be cleared up and missed the Junior Prom as a result. Protection of the general student body always comes first in my mind!

Last October 9, 2002, a Wednesday morning, Steven (Principal Carpenter) and I heard the sounds of a fire alarm when there was no fire drill scheduled. That usually means only one thing: there is a real fire in the school and our students' safety is in danger. We each helped escort several classes out of the building, and then gathered on the front lawn to take stock of the situation. When most of the school had been evacuated, we discussed among ourselves and teacher Lily Lightning the fact that we did not see Mr. Schultz, the oldest teacher on staff. Mr. Schultz was an excellent teacher in years past but now has periods during which he is not entirely lucid. In any event, my efforts to terminate him have not been successful, so there we were, worried about what might have happened to him.

Well, it seems that he walked into a fire gong on the third floor and set off the fire alarm all by himself. When he was brought downstairs to the Infirmary after this emergency, he was certainly unfit to resume his teaching duties for the day and was sent by ambulance to Mercy General Hospital at our Nurse Bagagog's direction. Nurse Bagagog is a Licensed Practical Nurse but has extensive emergency medical experience from treating victims of insurgent rebels in the southern Philippines. Mr. Schultz was indeed woozy and incoherent, even more so than he usually is. But of course, we were all concerned about possible head trauma. It was two students, C.C. Rider and Benya Minton, both juniors, who brought him down from the third floor, where they had found him lying semi-conscious in a heap. They were accompanied by our Security Guard Lamarr. This was certainly very good of those students, I cannot deny that.

However, following almost directly after their arrival, a student named Purify Appleton arrived at the Infirmary with a very bloody nose and several facial lacerations. He was accompanied by some classmates. My office is not far from the Infirmary on the ground floor of the school, so I believe I was the first member of the administration to meet Purify at the Infirmary. Purify's face looked so bad to Nurse Bagagog that she recommended he go by ambulance to the hospital with Mr. Schultz for X-rays and proper treatment. Purify refused, even though the extensive facial injuries looked horrific and the student seemed to be moaning in pain. I tried to persuade the child myself but, once again, my advice fell on deaf ears.

I promptly learned that there had been an altercation on the staircase, that in their haste to run upstairs, C.C. and Benya had tried to barrel their way through Purify and the others. Purify apparently asked them to excuse themselves for this rudeness, at which point C.C. struck Purify in the face, causing this grave injury and knocking off his eyeglasses. Purify left his broken glasses in the Infirmary and the Nurse brought them to me later. I turned the pair of glasses over to the police as I believed it might be crucial evidence.

While I certainly understand the urgency of the situation, and commend C.C. and Benya for trying to locate and lend assistance to an old, feeble and missing teacher, haste certainly does not excuse C.C.'s conduct. All the other classmates told us that C.C. had struck Purify first. Certainly, bias toward their classmate and friend is a possibility, but I think that, after holding my position for so long, I have a faculty for knowing the "ring of truth" when I hear it. I can tell when students are lying to me and when they are telling the truth – after all, with all the lies that students tell me, their teachers and members of the administration, I've had more than my share of practice discerning the difference. I saw no reason to question the veracity of Purify's or the others' statements about who started this fight. It should be remembered also that C.C. showed no signs of corresponding injury, so it remains apparent to me that Purify did not strike the first blow. I do not believe that there is any substance to C.C.'s claim of self-defense just because of their difference in weight. Nor did I then. It does not excuse the first physical blow to say that the other person is 'bigger.' Students must face the consequences of their actions and take whatever punishment the law deems appropriate. That is why I persuaded Principal Carpenter to notify the authorities after Purify was unable to return to class for the remainder of the week. We did the right thing.



SCOTTIE BUBER
November 19, 2002

Affidavit of Casey Raimundi Witness for the Prosecution

My name is Casey Raimundi, I reside at 1211 Easterbrook Avenue, Apt. 6H, in Domeboro, New York. My nickname is "Easy" because I am easy to get along with. I like all kinds of peeps, I mean people: old ones, young ones, boys, girls, I treat everyone with respect. I am a senior at Domeboro Public High School in the town where I live. Mr. Mineo is our teacher; outside of Lily Lightning, he is really the coolest teacher there. The other students at Domeboro call our class "The Pit" but that doesn't matter to us – in fact, once they started doing that, we started calling ourselves the "Pit Bulls" just for a laugh. The whole school might think that a Pit Bull is just a mean old dog, but we know better – it is actually an offshoot of the American Staffordshire Terrier, and there's nothing wrong with that sweetheart, just ask that C.C. Ryder who talks dogs so much day and night. The reason they single us out is really an ego thing with the rest of the school, and we know it: school, at least academics, is not the most important thing on our minds. We know we are not dumber than anyone else in that school. I can read fine, I read to my little brother his bedtime stories every night. Some of us act up a little bit, get a little hyper once in a while, but we are no dummies and we are not violent. Some of us have part-time jobs like grease-monkeys or soda jerks after school, but hey, that's how Tom Waits got his start and he's no dummy. Okay, so maybe our grades are not the best in the school but we can take apart engines and build things those computer geeks can only dream about. Some of the students in our class make beautiful, really creative jewelry, and they didn't have to go to any art class to learn how. We don't belong to any athletic team but some of us work out, nothing wrong with being fit and fine.

I don't know what I want to do when I graduate so don't ask me.

I remember the day in question when Old Man Schultz set off the fire alarm bell with his head. We were in our fourth floor classroom when we heard the fire alarm gong. Ever hear the phrase, "You know the drill?" Well, it comes from being prepared in a fire drill. I think that Mr. Mineo went ahead taking the first bunch of us. There are about 30 of us in the Pit, so I was with a bunch of my homeboys and girls waiting for Mr. Mineo or someone else to return for us. I do remember we weren't exactly rushing out when we heard security guard Lamarr screaming in the hallway "everyone get out of the building"! The school building itself was pretty quiet, meaning that it must have been pretty empty by that point.

All of a sudden, as we were going down the staircase, we saw C.C. Ryder and Benya Minton come blazing up the stairs like they were about to save the world. My buddy, Purify Appleton, said something to C.C. like "Hey, where do you think you're going?" since C.C. was just trying to barrel right through us, without so much as an "excuse me", obviously not caring which one of us got knocked down.

I definitely heard C.C. answer, "Shut up, we don't have time." "Say what?" Purify exclaimed. "You don't have to time to have manners? Where did you grow up – in a barn?" We all started laughing at that – Purify is such a cut-up, although it would have been even funnier if Purify had asked C.C. "where did you grow up, in a KENNEL?!!!" Which C.C. probably did. Ha ha. I don't know what it was with that kid, C.C. was just not going to take the time to be polite and say, "Excuse me," which was all that we wanted, all that we deserved. Purify may have made some scary move that looked like he was going to touch C.C., but I happen to know that we really feel, as kindred spirits, above such nonsense. Purify would never do anything like that to another student. We are non-violent to the core. Purify most of all, look at the name.

This was not good enough for those losers, however. I did see C.C. reach out and slug Purify in the nose, right in the nose, and I wasn't but four or five inches away. In fact, I was on the same step as

Purify, and Benya was way behind C.C. so I had a much better view. I saw the blood start spurting out of my friend's nose. Those eyeglasses Purify spent so much money on, they kind of look like a pair of Elton John's, went flying and then we heard them shatter on the floor. That's when Purify yelled, "Oww, I'm gonna kill this kid!" We started running after C.C. and Benya but they made a fast exit out a stairwell and we didn't see them again until we brought Purify to the Infirmary on the ground floor. By then, Principal Carpenter and Vice Principal Buber and Nurse Bagagog were all panicky and Purify was in real pain, so our only concern was for that nose injury Purify suffered. Imagine just walking down the stairs with your homeys and getting your nose busted and your glasses all smashed up for no reason at all. Well, that's what happened.

Nurse Bagagog did some kind of job on Purify's nose but she also recommended that he go for some medical treatment at the hospital, but Purify just returned to the class for the rest of the day. The next day, though, no Purify in class, and when I went round to visit after school, sure enough, wow, there was lots of swelling and both eyes were black, purple and blue. Purify could talk a little but kept saying, "Owwwww, Gibbee sub bore Percodan, it's ober there." I think it took at least a week and a half to get that nose back to normal, and then the glasses must have cost a lot of cash too. All in all, Purify missed about four days of school, you can ask Mr. Mineo.

I am sure glad they arrested C.C. for assault on my friend, Purify. As an eyewitness, I am here to testify that there was no question of self-defense. That weaselly C.C. struck first.

And now my friend, who went to London to pursue a dream, a great talent, is laid up in the hospital far away from home and friends, so I really hope they throw the book at C.C., whether or not Purify recovers in time to appear at this trial. I'll appear. I'll testify!

Casey Raimundi

CASEY RAIMUNDI

November 19, 2002

Affidavit of Octavio/a Belen Bagagog, L.P.N. Witness for the Prosecution

My name is Octavio/a Belen Bagagog and I reside at 12 Mutton Lane, Eastborough, New York, right outside Domboro. I am a naturalized U.S. citizen. I speak English and Tagalog, the language of my native country, the Philippines. I come from the town of Zamboanga in the province of Mindanao in the southern Philippine archipelago. I grew up in Zamboanga with my many brothers and sisters and I can remember the happy times before the pirates and the insurgents came and turned my homeland into a place of danger and disaster. Now it is even worse because of Abu Sayyef, those crazies who cut off heads. Many times I helped our cadre leaders care for wounded citizens who were shot or bayoneted by Indonesian pirates and the Filipino rebels; I learned how to bandage wounds, treat shock, halt blood loss with tourniquets, and many other kinds of emergency medicine when I was still quite young. I saw so much bloodshed, strife and death by the time I reached 16 years of age that I decided to become a nurse if I ever had a chance. My parents helped me get to Manila, where I worked in the kitchens of Malacañang Palace, the official residence of the President of the Philippines. That is where I met my future spouse, who was then with the U.S. Embassy. After we wed, we moved to New York City, where I worked briefly as a translator for the United Nations. Because it was my dream to become a nurse, I enrolled in the NYU School of Nursing, but I did not obtain my R.N. degree before we moved to Domeboro for my spouse's job. With my education interrupted the way it is, all I hold now is a certificate as a Licensed Practical Nurse.

Anyway, I enjoy working in the Infirmary of Domeboro High School. The staff is very nice, I like the students, and we live in a nice, quiet town. Of course, there is a doctor (Dr. Wrightscripps) on staff for me to call if I have questions but that happens infrequently. If someone comes to my Infirmary with a bad wound or illness, I always call the paramedics to send an ambulance for my patient.

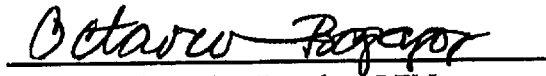
On that Wednesday in October, I remember that right after the fire drill, two students, C.C. and Benya, with the assistance of the security guard Lamarr, brought in that teacher, Mr. Schultz. He had banged his head on the fire alarm gong. I gave him some smelling salts, tried to orient him to time and place and, although he was coming around, he was still woozy. Because of his age, I felt it best to call for an ambulance so that's what I did. While the paramedics were taking care of Mr. Schultz, a student, Purify Appleton, showed up with a bloody gash on his nose. It appeared to me that he had suffered some blunt trauma and had other lacerations on the soft tissue of his face. The bleeding was quite profuse. He was conscious, so I urged him to go to the hospital in the same ambulance with the teacher. He adamantly refused, being stubborn just like all those kids usually are, and wanted me to treat his wounds right there and then. "Well, I don't know, Purify," I said, "this could prove troublesome. You seem to need sutures for this laceration, and I think you should have your cheekbone X-rayed. It might have been damaged and you might get a black eye if you don't. Why don't you just go in the ambulance and let them check you over?" Purify again declined emergency hospital treatment. "Just fix me up, Nurse." Very stubborn!

Well, I have closed superficial wounds many, many times both at home in the town of Zamboanga and the outlying jungles as well as in New York while I was getting my nursing training. I certainly know how to tend to a laceration.

First, I carefully cleaned up the blood, then I used antiseptic all over Purify's face to prevent any infection. I chose a heavy-duty butterfly strip because, with the injury being located on the nose, I thought that it needed to be strong enough to withstand a sneeze which is, of course, involuntary motor action that a person can't control. I compressed the tissue surrounding his open laceration quickly, without any anesthetic. Under other circumstances, I would have closed his laceration with a 5-gauge polymer suture, but I am prohibited from administering that kind of treatment in the school Infirmary. While it surely would have left only a trace scar as the years went by, rules are rules.

I must say that Purify was brave about the whole thing because it was clear to me that Purify was injured and in pain. I know Purify is a popular student and could have been showing off for his friends' benefit. I administered two Tylenol to the patient and said to remain in school only as long as he felt well enough to do so. Purify left the Infirmary in a hurry without his broken glasses. I turned the glasses in to V.P. Buber as soon as I finished my report.

It was my feeling that Purify should have gone to the emergency room. On the other hand, what I did is absolutely the right treatment and the proper standard of care for such an injury. I did not see Purify the following day but I expect there would have been some bluish bruising over the face – naturally they would subside during the week and I thought that Purify would be fine. I was just doing my job the best way I knew how to, I am an extremely qualified, well-trained and experienced nurse.

A handwritten signature in black ink, reading "Octavio Bagalog", written over a horizontal line.

Octavio/a Belen Bagalog, LPN

November 19, 2002

Affidavit of Defendant C.C. Rider Witness for the Defense

My name is C.C. Rider, I reside at 212 Catoctin Street, Domeboro, New York with my mother, father and sister Candace. I am a junior enrolled in Domeboro High School. I have maintained a consistent B average and I play keyboards in the high school band. In my spare time, I am a dog-walker for working people in my neighborhood, that is how I get spending money. My interest is my love for purebred dogs and that is why I spend a lot of time caring for, grooming and showing my Komondor, Netherbyers Champion Snowfringe, Waffles. A Komondor is a large white working dog from Hungary, a rare but officially recognized breed in this country. I have to spend a lot of time grooming Waffles because he has what's known as a 'corded coat' – he looks like a bedspread with fringe on wheels. I also enjoy participating in Junior Showmanship Trials, where the handlers, from ages 10 – 18, and not the dogs, are judged on their abilities in the showring. I am hoping to become a professional breeder and handler when I graduate college, where I plan to study biology and zoology.

I attended the annual Cadminster Kennel Club Dog Show in Madison Square Garden on Monday and Tuesday, October 7 and 8 of this year. Waffles and I had a lot of fun. I showed Waffles in his breed competition and he almost won Best of Breed. I don't know why he didn't, but I came in third in the Junior Showmanship Novice Class —that was great! It was so much fun to talk to all the other junior handlers from around the country that we stayed there until Best in Show was announced Tuesday night. So I got back to Domeboro kind of late and dragged myself into school the next morning; I was feeling pretty tired.

I remember around second period that Wednesday morning, right after biology ended, I was on my way to the cafeteria with my best friend Benya; actually I needed some caffeine although I rarely drink the stuff. We were on the third floor – that is when we heard the sounds of a fire alarm. We both had our good sneakers on so we ran outside to the front lawn. I must admit that I am the curious type. I am always interested in watching the interaction among the staff of Domeboro High School, especially Miss Lily Lightning (we call her "Strikes" because of her rep on the Domeboro High School bowling team) and Principal Steven Carpenter. I think she likes him but Benya disagrees with me – anyway, we moved close to where we could watch and hear Mr. Carpenter talking with Vice Principal Buber. It turns out they were saying this was not a scheduled fire drill and nobody knew why or what to do about it. Mr. Carpenter was yelling, "What is going on here?" and "DO I SMELL SMOKE?" We saw Strikes walk over and join them. Buber was yapping at Carpenter like a terrier, and Carpenter didn't know what to do. So we were milling around, waiting for the fire engines to show up and taking bets on whether Strikes was checking out Mr. Carpenter or not. I was almost too tired to stand up, I really wanted some coffee. Then we heard the principal ask Buber: "Where is Shultz?" They all looked around and although many of the students, aides and teachers were on the lawn already, Mr. Shultz, who is very old, was not among them. I heard Buber say, "I don't know, Steven, he had history in Room 314 last period." Thinking that this could be a real fire and that the old man might get hurt, Benya and I just looked at each other and, without a word, agreed to dash back in, find him and bring him to safety.

So Benya and I went tearing up the "up" staircase, trying to get to the third floor. I was slightly ahead of Benya when we ran into this group from the dumbest class in the school, called "The Pit," where all the delinquents have to go because they don't know how to read. Since my head was down for momentum as I was rushing up the stairs, I didn't see one of them. Purify was right ahead of me on the staircase so unfortunately I did bump into the loser. I started to apologize but Purify yelled out "Hey, watch where you're going, Punkface!" I mumbled an apology to Purify, then said something like "Watch out, we don't have time!" Purify got pretty excited then, yelling, "Say what? You don't have time to have manners? Where did you grow up, nerd – in a barn?" Before I knew it, Purify was

grabbing my arm while the other Pit Bulls were surrounding me. Benya was right behind me, one step below. There really was no way out and we still had to find Old Man Schultz. He could have had a heart attack or caught fire for all we knew! "That's it!" Purify yelled to the Pit Bulls, "I'm gonna kill this kid." So I really just lashed out in self-defense, took a swipe at Purify's face and accidentally knocked off those Space Age, phony Elton John glasses Purify likes to wear. I heard a roar as Benya grabbed me from behind and we ran down to the second floor, and out into the hallway, looking for another way up to Room 314. I had no idea I had injured Purify's nose until sometime later. I certainly meant no harm, I was only trying to defend myself and get out of a very lopsided situation. I consider myself very lucky that those goons did not get a piece of either me or Benya, because they really wanted to. They, especially Purify, are mostly big and muscular from spending time at the gym, and I'm not. They are really nasty kids; they get their kicks proving they are Pit Bulls by throwing rocks at dogs on their way home from school.

Eventually, Benya and I made it to the third floor and there was Mr. Schultz lying right under the fire gong, with his lights out. It looked to us like he must have hit it with his head by walking straight into it. We were just trying to revive him and get him to his feet when School Security Guard Lamarr showed up. Lamarr, Benya and I helped Mr. Schultz, who was very unsteady on his feet, get down to the Infirmary, where the nurse sent him off to the hospital by ambulance.

At the Infirmary, Lamarr said, "C.C., I have to take you to Buber's office because of what you did to Purify. he's got a bloody nose and they want to see you." Well, naturally I got really upset. I never saw any blood on Purify. All I thought I did was knock those goofy glasses off. But I said Okay. I like Lamarr, he's a friend of mine and I believed I could trust him to tell the truth if things got ugly.

Then Lamarr steadied me and accompanied me into Buber's office. Mr. Carpenter was there too. I know I was in trouble then but I did not know how much. I think things got out of hand because Buber called the cops the next week to arrest me, before Security Guard Lamarr could even finish filing a report. All I had been doing was trying to rescue an old, injured teacher and I was stopped in my tracks by a bunch of goons who didn't care and were taking their sweet time coming down the stairs. I'm no fighter, Purify struck me first, I was only trying to defend myself. If only Purify had let me through that crowd of dummies, nothing would have happened at all. I'm sure of it!



C.C. RIDER, November 15, 2002

Affidavit of Benya Minton

Witness for the Defense


My name is Benya Minton, I reside at 28 Murphy Crescent in Domeboro, NY. I am a junior at Domeboro High School and I would like to go to medical school one day. My family does not have much money. My mom is a waitress and my father is a truck driver, so I might have to start out at Domeboro Community College. If I keep plugging away and get good grades, I hope that one day I can be a hematologist and study blood. My first cousin Markie has hemophilia and I find blood fascinating. Not that I am into vampire stuff or anything like that, I just find blood types and groups very interesting. I think I am a pretty good student, I'm definitely a good artist. I participate on the editorial board of the high school newspaper and I am always interested in school affairs. Sometimes I do charcoal or pastel portraits of good-looking students and give them to them if I like them. Just as a gift, without collecting money. Because even though we don't have much money in the family, my parents brought me up to believe that kindness to other people is more important.

C.C. Rider is a wonderful, smart and gentle person. We have many classes together and I would hate to see C.C. get convicted of a crime. I remember the day in October when there was an unscheduled fire drill – actually, it was not a fire drill at all, it was a tall teacher, Mr. Schultz, who walked right into the fire alarm and set it off, sending the entire school into panic. It wasn't his fault though. He is very old and he hurt himself pretty badly. C.C. and I were coming from our biology class when we heard the gong – by the time we got outside, we saw our principal, the vice principal and our favorite teacher, Miss Lily Lightning, standing around talking. They did not know where Mr. Schultz was, even after almost everybody had exited the building. C.C. and I decided that we better look for him because something bad might have happened. So, throwing caution to the wind, we rushed back inside to look for him. On our way up the UP staircase, we were stopped by a bunch of kids from the worst class of seniors. It is called the "Pit" and all the students are called "Pit Bulls" by everyone else because they are both pretty dumb and usually pretty aggressive. They were giving C.C. a hard time on the stairs just because we were trying to get past them. I did not see everything because I was behind C.C. on the steps but I saw enough to be really scared. I heard one of them, who goes by the name Purify, start yelling at C.C. because we were trying to get past that mob while they were blocking the stairs and taking their time. I guess they are not scared of fire — a dog can always jump out the window. Or maybe that's a cat.

Anyway, I heard Purify start to hassle C.C., saying things like "Don't you have any manners?" and stuff like that. It was pathetic, we just wanted to get up the stairs to help someone. Suddenly, there was some pushing and shoving and I heard Purify yell, "Ohhh! I'm gonna kill this kid!" I think Purify was angry because those ridiculous Elton John spectacles fell on the floor – maybe they broke. I started worrying about my friend's safety since there were a lot more Pit Bulls than there were of us and they are always looking for trouble. Purify is about the size of me and C.C. put together so it is absolutely ridiculous to claim that C.C. started the fight. All those Pit Bulls are large and meaty because they have almost no brains to exercise so they must work on their bodies. If C.C. hit back at Purify it was definitely in self-defense. I doubt very much that Purify was ever in pain—he's just a big crybaby. We sure weren't looking for trouble. So I tugged and tugged at my friend until I managed to turn us around and head down that particular staircase and away from danger. We knew that Mr. Schultz was last seen somewhere on the third floor, and we eventually found him. He was totally sprawled out on the floor right under the fire gong. It sure looked like he had walked right into it and banged his head. We helped him to his feet and down the stairs to the school Infirmary – he was pretty woozy on his feet, being old and injured, and he is a big guy too. It was lucky that Security Guard Lamarr was around to help us bring him downstairs to the school Infirmary.

The school Infirmary is run by Nurse Bagagog. I just want to say that she is not a real nurse but you'd think she is a doctor the way she acts. I have gone to the Infirmary several times when I was sneezing

furiously and I didn't know whether it was hay fever, allergies or a sinus infection. I was just uncomfortable sitting in class those times and hoping to get some antihistamines, Nurse Bagagog immediately ran for the oxygen tube and tried to strap it on me. I didn't need oxygen! I didn't have any fever, and I sure didn't have pneumonia, like she was making out. Her story is that she spent some time as an amateur medic in the jungles of the Philippines so she really thinks that she is some kind of triage or emergency doctor, like those funny ones on that old TV show "M.A.S.H." Always overreacting! She needs to get a grip, she's only a school nurse and not even a registered one at that. For heaven's sake, Bagagog is only an L.P.N., my sister knows about as much first aid as Bagagog does, and that is because my sister had to take a test to be a lifeguard at the Domeboro Country Club. Bagagog acts like everything is a big life or death emergency — if you need a couple of aspirin for a sore knee, she will tell you that you need a shot of Cortisone. If you fall and scrape your arms, she will say, "Oh, you need a tourniquet to stop the bleeding." Really, this is one person who wants to live out the fantasy of being a medic on a daily basis, and the students are just her guinea pigs. Mr. Carpenter should get a registered nurse for the Infirmary if he wants to keep us alive and healthy — somebody who would rather be practicing trauma medicine without a license in the jungle is just not safe for us New York high school kids. So I would take anything she says about Purify's injuries with a pretty big grain of salt, and I am not just saying that because C.C. is my pal. I am sure that if you ask Miss Lightning or some of the other teachers, they will confirm that a lot of students would rather suffer with whatever is ailing them until school is out rather than go see this wannabe Wonderdoctor.


BENYA MINTON
November 15, 2002

Affidavit of Security Guard Cody/i Lamarr Witness For the Defense

My name is Cody/i Lamarr and I reside at 7565 Bountiful Road in Domeboro, New York. I am a retired member of the Domeboro Police Department, in which I served as patrol officer for 20 years. Following my retirement, because I was still healthy and fit, I took a job as a security officer in a department store, Harvey's. I did not like that very much, dealing with shoplifters and inventory control and all that. When I heard that there was an opening for a security guard at Domeboro High School, my spouse and I agreed that I should apply. It is one of the few public high schools in this area and I knew it would not be a boring assignment. Teenagers are never boring, that's for sure. I have great respect for Principal Carpenter as an administrator and I must say that I have enjoyed the two years I have served on the staff so far. I attended Domeboro back when, so I remember some of these very students' parents when they were juvenile delinquents themselves. I always get a chuckle out of seeing how close the acorn falls from the tree.

On the day in question, October 9, 2002, I was roaming about the halls on the ground floor watching the students as I am wont to do, just making sure that nothing is amiss, when I heard the fire alarm go off. I started blowing my whistle to make sure all the teachers and kids would not dawdle the way they usually do but would get cracking and hurry out of the building, which is four stories high. I walked the length and breadth of each corridor on the ground floor, checking the classrooms and all the lavatories. I did go outside for a few minutes to touch base with Principal Carpenter and Vice Principal Buber. It seemed that they were not entirely certain whether this fire drill was scheduled or not. In any event, procedures must be followed AS IF a real fire is taking place – safety is paramount. I immediately went back inside and went upstairs to canvass the entire building.

I was at the third floor landing of the "up" staircase when I heard a scuffle break out below me. I recognized voices from the class called "The Pit". The Pit Bulls were obviously trying to go down the wrong staircase. I immediately went down to investigate and get these kids moving. It appeared that C.C. Ryder and Benya Minton were attempting to go up. They had no business trying to do that either until the 'All Clear' sounded, but I was soon to learn that they were concerned about a teacher in distress. The fight started because one Pit student, Purify Appleton, did not want to let C.C. and Benya pass by. All those Pit bullies were making a big stink about C.C.'s manners as they just sauntered down the stairs, taking their sweet time. I thought I saw, though not too clearly, Purify grab C.C. by the arm. When C.C. tried to get free, C.C. landed one on Purify's nose, which caused Purify's glasses to fall off and shatter on the ground. Then I heard Purify yell, "Owww! I'm gonna kill this kid!" and just when it seemed that Purify and the other bullies were going to surround C.C. and flatten him, Benya pulled C.C. down the stairs and away to safety. Since I shooed those Pitbulls down the stairs and out of the building pronto, I stayed on the third floor and shortly saw C.C. and Benya appear at the top of another staircase. It was then that I found out what they had been in such a rush about.

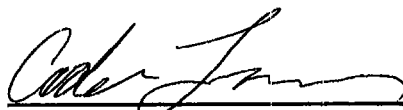
On the third floor, much to my surprise, we found old Mr. Schultz, the oldest teacher on staff, sprawled out under the red fire gong – it looked like he had walked right into it, because he is a long drink of water. I was just checking to make sure that all the remaining classrooms were empty while C.C. and Benya tried to revive the poor old man. He was pretty out of it, so I gave them a hand getting him to his feet. There are no elevators so all three of us helped carry and walk him down the stairs to the school Infirmary on the ground floor, where Nurse Bagagog quickly called an ambulance for him.

I knew then that Principal Carpenter wanted to see C.C. and Benya so I accompanied them to the principal's office. Now, I want to state that this is a fair and compassionate man. Some might not say

the same thing about Vice Principal Buber, but, in my opinion, Buber is not so bad. He just lacks the charisma that Carpenter has and so comes across a bit harsher. Buber was there too, all ears, because apparently when Purify showed up in the Infirmary, there were all kinds of bleeding that could have been caused by a broken nose, not just some broken Elton John eyeglasses. After the students were questioned and dismissed, in response to Principal Carpenter's questioning, I truthfully replied, "Oh yes, sir, these kids from the Pit were going "down" the "up" staircase when C.C. here was just screaming to get by. These Pit Bulls are always causing mischief on the staircase. When I heard the fire alarm sound I tried to direct all students to the proper stairways for orderly evacuation of the building, but those Pit Bulls just don't listen. I'm sure they started all this. When I found C.C. and Benya, they were tending to poor Mr. Schultz as if he were their kin."

I understand that Vice Principal Buber wanted to launch a full-scale investigation. Buber tends to bend over backwards to defend the tough kids ever since he made that mistake with the kid from California. Buber asked me if I had really seen everything. I said, "Yes, sir, as much as I could see from the landing above them. And when it was over, I still had to shoo those students out of the building because the "All Clear" hadn't sounded yet. That's when I went back out onto the third floor and saw C.C. and Benya, already come up the other staircase, trying to help poor Mr. Schultz."

This is my truthful testimony, as accurately as I can remember.

A handwritten signature in cursive script, appearing to read "Cody I. Lamarr", written over a horizontal line.

CODY/I LAMARR
November 12, 2002

PART VI

2003 Mock Trial Case Materials Official Exhibits

Domeboro High School **Incident/Accident Report Form**

School Report

Report Date: 10/9/02

1. Name of Student Purify Appleton Student ID # 43072
- 1a. Name of Parent/Guardian Verity Appleton
- Address 72 Scrapple Road, Domeboro Phone # _____
2. Sex: 1. Male Grade: SR Age: 18 Incident Date: 10/9/02 Time: 10:10 (a.m.) p.m.
2. Female _____ mm dd yy
- Day: SU M T W TH F S
1 2 3 4 5 6 7
3. School Building Name _____
- Where Incident Occurred: Domeboro High School

- 01 Before School Hrs.
☒ 02 During School Hrs.
 03 After School Hrs.
 04 School Not in Session

(CIRCLE 1 ST APPLICABLE)		CIRCLE ONE	
A Place of Incident	B Source of Injury	C Nature of Injury	D Body Part Injured
01 Phys. Ed. Class-Indoors	01 <u>Children fighting</u>	01 <u>Abrasion</u>	01 Abdomen
02 Phys. Ed. Class-Outdoors	02 Horseplay	02 Amputated	02 Ankle
03 Organized Athletics-Home	03 Sharp objects	03 Asphyxiated	03 Arm
04 Organized Athletics-Away	04 Falling/Flying Objects	04 Bite	04 Back
05 Gymnasium	05 Gymnasium/Equipment	05 Bruise	05 Chest
06 Locker Room	06 Specialized Creative Apparatus	06 Bumped	06 Ear
07 Swimming Pool	07 Phys. Ed Equipment	07 Burn	07 Elbow
08 Science Lab	08 Machinery/Equipment	08 Concussion	08 Eye
09 Manual/Indus. Arts/Technology	09 Bee Sting/Animal Bite	09 Contusion	09 Face
10 Home Economics	10 Door/Window/Hatch	10 Crushed/Pinched	10 Finger
11 Auditorium	11 Hot Surface	11 Dislocated	11 Foot
12 Library	12 Electricity	12 Fractured/Broken	12 Groin
13 Restroom	13 Chemical/Paint/Fumes/Dust	13 Frozen	13 Hand
14 Classroom/Office # _____	14 Stairway	14 Hernia	14 Head
15 Halls	15 Fire/Smoke/Flames/Flash	15 Infected	15 Heart
16 <u>Stairways</u>	16 Vandalism	16 Irritated	16 Hip
17 Playground	17 Structural collapse	17 Cut	17 Knee
18 Parking Lot	18 Falls/Slips	18 Scratch	18 Leg
19 School Grounds	19 Unintentional Act	19 Inflamed/Swollen	19 Lung
20 Cafeteria	20 Condition of Premises-Interior	20 <u>Lacerated</u>	20 Neck
21 Bus # _____	21 Condition of Premises-Exterior	21 Overheated	21 Pelvis
22 Automobile	22 Furniture (desk, chair, locker, etc.)	22 Poisoned	22 Scalp
23 Extracurricular Activity (non-sporting)	23 Wall	23 Punctured	23 Shoulder
24 Other off-premises (class trip, to school, etc.)	50 Other _____	24 Sprained/Strained	24 Teeth/Mouth/Jaw
50 Other: _____	70 Unknown	25 Shock/Trauma	25 Toe
		26 Chipped	26 Wrist
		50 Other _____	27 Multiple
		70 Unspecified Injury	28 Nose
			50 Other _____
			60 No Injuries

At the time of incident:

8. Name of supervisor in charge Principal Carpenter Incident Witnessed? ☒ Y ☐ N9. Narrative Description of Incident: Students fighting in stairwell during fire drill. Student suffered laceration to nose due to broken glasses

Witnesses: Name Casey Raimundi Name Security Guard Lamar

Address 1211 Hesterbrook Ave Address Domeboro High

Phone (414) 450-1840 Phone _____

Were the following called? If yes:

Parent ☒ Y ☐ N Name _____

Physician ☒ Y ☐ N Name _____

Ambulance ☒ Y ☐ N Name _____

Was First Aid Rendered: ☒ Yes ☐ No

Was the injured taken anywhere? ☒ Y ☐ N

If Yes: By whom _____

By What Means _____

Where _____

Please print info. Below

Person completing This Form Octavio B. Bagg

Principal Steven Carpenter

Business Office Domeboro

Signature Octavio Bagg Date 10/9/02

DOMEBORO HIGH SCHOOL

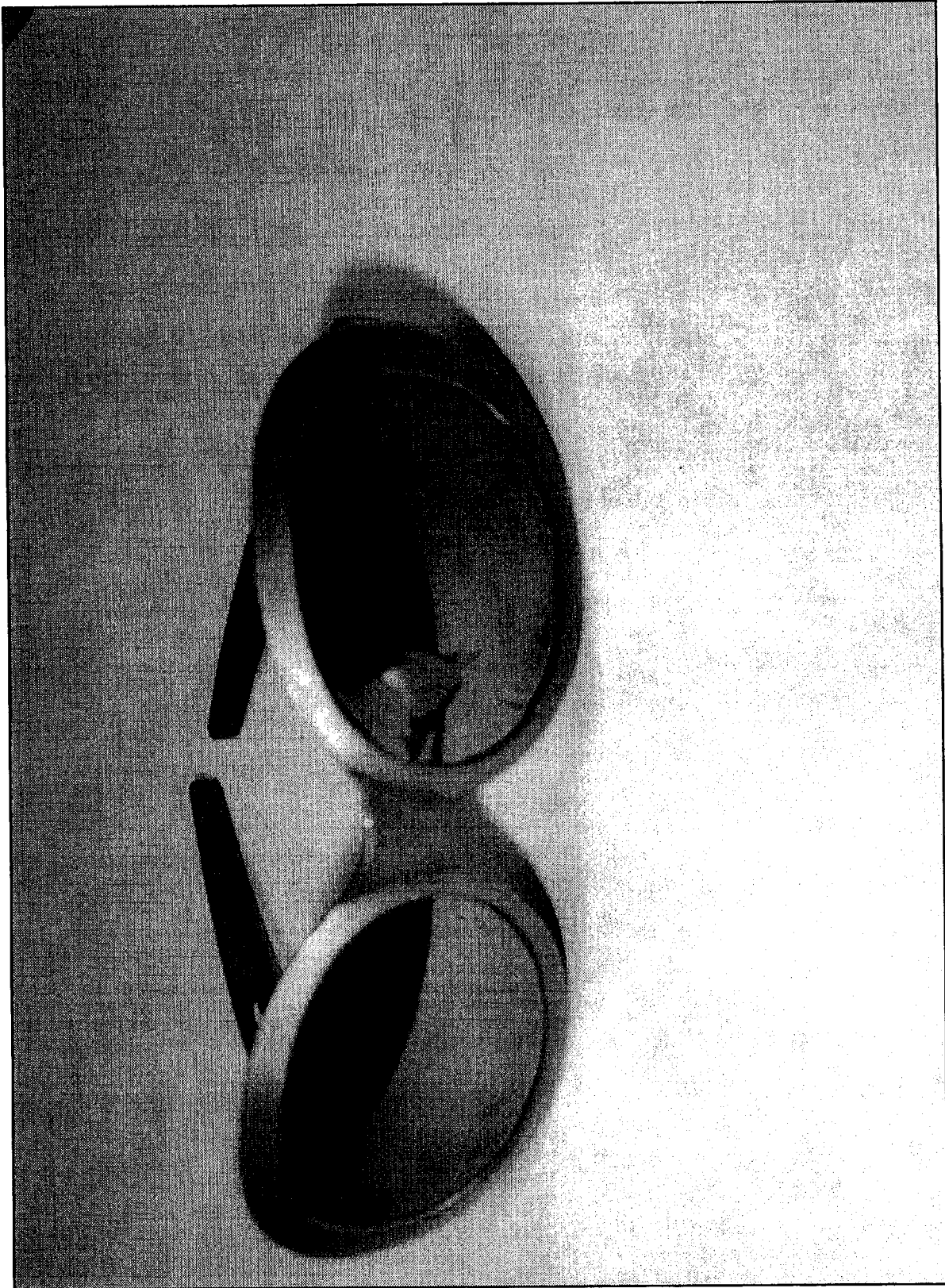
Exhibit 2

Security Log Book

Date Hour Post Radio Remarks

CONTINUATION OF DUTY	WEDNESDAY	9 OCT 02	TOUR 2200 - 600	
	4:00			EVERYTHING SECURED, QUIET AT THIS HOUR
	5:00			ALL REMAIN SECURE + QUIET AT THIS TIME
	5:15			ELEVATOR MECHANIC ON SITE, TECH
				LEAVE AT 5:20, ELEVATOR STILL OUT OF SERVICE
	6:00			SANDMEYER OFF DUTY RELIEVED BY CODY LAMAR
Continuation of duty	Wednesday	9 OCT 02	TOUR 0600 - 0200	
10/9/02	0600	DAS	4	Cody Lamar on duty
				Lamar relieved SG Finkbein with the following items
				or Post (4) Radio (3) Charger (2) Batteries (2) Log books
				monitor system (1) Phone
	0645			Teachers arriving, building secure
	0700			School fully opened, perimeter doors secured
	0830			First bell - everything normal
	0911			End of 1st period, paint spill near gym
	0915			Bell begins 2nd period. Internal staff to pass
	0958			After 2nd period fire drill sounded, false alarm
				Students fighting on stairway, student Appleton taken to nurse
				W. Schultzy 200 taken to nurse - EMS called, Schultzy taken by ambulance
				Students CC Rider and Banya Khatun involved - Guber's office
				for questioning - released both students
				See nurses report for further information

**George County Sheriff's Office
Police Photograph, Taken 10/14/02
Broken Glasses belong to Purify Appelton**



PART VII

PERTINENT LAW AND INFORMATION

New York Penal Laws

§ 120.00 Assault in the Third Degree.

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or a third person; or
2. He recklessly causes physical injury to another person; or
3. With criminal intelligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the Third Degree is a Class A Misdemeanor.

§ 10.00 Definitions of terms of general use in this chapter.

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

9. "Physical Injury" means impairment of physical condition or substantial pain.

§ 35.05 Justification; generally.

Unless otherwise limited by the ensuing provisions of this article defining justifiable use of physical force, conduct, which would otherwise constitute an offense, is justifiable and not criminal when:

1. Such conduct is required or authorized by law or by a judicial decree, or is performed by a public servant in the reasonable exercise of his official powers, duties or functions; or
2. Such conduct is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this subdivision is offered by the defendant, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a defense.

§ 35.15 Justification; use of physical force in defense of a person.

1. A person may, subject to the provisions of subdivision two, use physical force upon another person when and to the extent he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by such other person, unless:

- (a) The latter's conduct was provoked by the actor himself with intent to cause physical injury to another person; or
 - (b) The actor was the initial aggressor; except that in such case his use of physical force is nevertheless justifiable if he has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force; or
 - (c) The physical force involved is the product of a combat by agreement not specifically authorized by law.
2. A person may not use deadly force upon another person under circumstances specified in subdivision one unless:
- (a) He reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he knows that he can with complete safety as to himself and others avoid the necessity of so doing by retreating; except that he is under no duty to retreat if he is:
 - (i) in his dwelling and not the initial aggressor; or
 - (ii) a police officer or peace officer or a person assisting a police officer or a peace officer at the latter's direction, acting pursuant to section 35.30; or
 - (b) He reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible sodomy or robbery; or
 - (c) He reasonably believes that such other person is committing or attempting to commit a burglary, and the circumstances are such that the use of deadly physical force is authorized by subdivision three of section 35.20.

RELATED CASES:

***In the Matter of PHILIP A., a Person Alleged to be a Juvenile Delinquent, Appellant.* 424 N.Y.S.2d 418, Court of Appeals, New York:**

Juvenile appealing from an Order of the Supreme Court, Appellate Division, affirming, on disposition, that juvenile committed an act which, if committed by an adult, would constitute the crime of assault in the third degree, Court of Appeals held, *inter alia*, "pain is . . . a subjective matter. While the question of whether the 'substantial pain' necessary to establish assault in the third degree has been proved is generally one for the trier of fact who, in reaching his or its conclusion, can consider, among other factors, the subjective reaction of the person claimed to have been assaulted, there is an objective level below which the question is one of law." Penal Law, § 10.00, subd. 9.

***People v. Mercado*, 539 N.Y.S.2d 325 (A.D. 1 Dept. 1989):**

Defendant convicted of two counts of attempted robbery in the second degree, one count of attempted robbery in the third degree and assault in the third degree, appeals on the basis that evidence was not sufficient to establish that victim sustained physical injury within statutory definition. Held: "In the absence of the John Doe victim, there was a lack of testimony from which the jury could have

legitimately inferred that this person had suffered any 'impairment of physical condition or substantial pain', as set forth in Penal Law § 10.00(9)", citing *Matter of Philip A.*).

***People v. Jiminez*, 55 N.Y.S.2d 895, 449 N.Y.S.2d 22 (1982):**

Testimony that victim suffered a one centimeter cut above her lip, without more, was not adequate to prove that victim suffered either substantial pain or impairment of a physical condition, and thus defendant was entitled to reversal of his conviction for assault in the second degree.

***People v. DiStefano*, 252 A.D.2d 530, 677 N.Y.S.2d 578 (2 Dept. 1998):**

There was insufficient evidence that defendant caused "physical injury" to complainant to support second degree robbery conviction; defendant punched complainant in forehead two times, complainant testified that his face was sore to the touch and badly "bruised" or scratched, but not bleeding and that his collarbone was sore, and complainant received no medical treatment other than ice applied to his head.

***People v. Tucker*, 221 A.D.2d 670, 634 N.Y.S.2d 218 (2 Dept. 1995):**

There was sufficient evidence that complainant suffered physical injury to support defendant's convictions for robbery in the second degree and assault in the second degree; complainant testified that defendant hit and pushed her in the face, causing her to fall to the floor and that she received medical treatment and was unable to go to work for two weeks because of head and backaches.

***People v. Hope*, 128 A.D.2d 638, 512 N.Y.S.2d 885 (2 Dept. 1987):**

Victim's testimony that he suffered pain for two to three weeks as a result of being dragged by his legs down a flight of subway station stairs while being punched was sufficient to support conclusion that victim suffered substantial pain, for purposes of assault prosecution.

***People v. Jackson*, 232 A.D.2d 193, 647 N.Y.S.2d 764 (1 Dept. 1996):**

There was legally sufficient proof of physical injury to convict defendant of assault in the second degree, even though victim did not seek medical attention; victim testified that he was struck on his head, neck, and shoulder with wooden stick and with such force that stick slightly broke and that when he collapsed to the ground, defendant kicked him. Detective corroborated that there was swelling to victim's head and face immediately after incident, and victim testified that pain was "too much".

