

**TRIAL COURT
CASE MATERIALS**

CASE T20-001

STATE OF MINNESOTA V. SHEM

Grand Larceny

FACT SITUATION

1 Marty McCulloch, an heir to a railroad fortune, lives in a lakeside mansion in the town of
2 New Prague, located in Scott County, Minnesota. Over many years, McCulloch amassed a
3 prestigious collection of artwork. McCulloch's home art gallery contains exquisite paintings
4 from various artists, including classics from Renoir, Goya, and Cassatt to modern and
5 contemporary works by Andy Warhol, Jackson Pollock, and Faith Ringgold. Art aficionados
6 regularly visit the mansion to admire the paintings.
7

8 Evan Shem is a second-year graduate student at New Prague University. Shem is studying
9 for a master's of fine arts, with an emphasis in the painting styles and techniques of mid-
10 20th century abstract expressionists. Shem acquired a considerable amount of debt as an
11 undergrad, and anticipated graduate school would cost even more. Shem allowed a
12 childhood friend, Charlie Gibbons, to move in to Shem's apartment, but later asked
13 Gibbons to leave.
14

15 McCulloch is a professor of art history at New Prague University. During Shem's first year,
16 Shem was in a class taught by McCulloch. Shem's contributions to the classroom
17 environment, along with Shem's performances on projects and exams, earned Shem an
18 internship at McCulloch's mansion, where Shem was tasked with maintaining McCulloch's
19 vast collection of artwork.
20

21 During the internship, Shem became interested in a particular painting, titled *Treason*, by
22 Fletcher Yazoo. *Treason* was a small, 11 inch by 14 inch canvas painting mounted in the
23 original wood frame from 1977 when it was painted. Edward McCulloch, McCulloch's
24 father, left the painting to McCulloch when he died.
25

26 As had become an annual tradition, McCulloch hosted an exclusive Fourth of July party at
27 the mansion for the high society of New Prague. The living room of the mansion had floor-
28 to-ceiling glass windows facing the back patio as well as sliding glass doors that were
29 open and led to the back patio with a view of the estate. Nearly 200 guests attended the
30 party. Shem was invited to the party, and Gibbons attended as Shem's guest. McCulloch
31 had asked Shem to serve as a docent for the evening. As docent, Shem watched over the
32 artwork and offered insight into the history and technique of the paintings. Sidney Ogden,
33 Shem's and Gibbons's childhood friend, was working as a parking attendant that evening.
34

35 McCulloch's gallery was open for viewing from 7:00 p.m. to 9:00 p.m. When guests were
36 not perusing the gallery, they were enjoying *hors d'oeuvres* and champagne in
37 McCulloch's spacious living area and open patio that overlooked rolling grass hills and New
38 Prague Lake.
39

40 Just before 9:00 p.m., the sky was dark, and McCulloch directed all the attendees to come
41 outside onto the patio where they could watch a display of fireworks illuminating the sky.
42 Then, after the firework show, McCulloch instructed everyone to enter the mansion where
43 dessert was served. The party concluded about midnight.
44

45 On July 5 around 12:00 p.m., McCulloch received a call from MT's Fine Art Auction House
46 (MT), informing McCulloch that someone had previously called MT regarding the value of
47 *Treason*. McCulloch had not made the previous call to MT. After the call, McCulloch

48 examined *Treason* and determined that the painting was not the real *Treason*. McCulloch
49 then telephoned the police. Detective Reese Barron arrived to investigate that same
50 afternoon. After Detective Barron questioned McCulloch, Barron identified Shem as a
51 person of interest. First, Shem had greatly admired *Treason*. Second, McCulloch thought
52 that Shem was a talented artist. Finally, Shem was serving as McCulloch's docent that
53 evening and was instructed to lock the gallery at 9:00 p.m. when the firework show was
54 scheduled to begin.

55

56 With McCulloch's permission, Detective Barron took the painting to police headquarters for
57 further investigation. Bernie Worcester, the official art expert retained by the police
58 department. On July 6, Worcester concluded that the painting was a fake.

59

60 Detective Barron went to Shem's apartment to investigate the matter further. Shem was
61 not home, but Gibbons was outside when Barron arrived. During a casual discussion,
62 Gibbons told the detective that Shem had a knack for creating near-identical replicas of
63 artwork. In addition, Gibbons explained how Shem's apartment functioned as a makeshift
64 art studio, as Shem possessed a thorough collection of brushes, paint, easels, and
65 canvasses.

66

67 On July 7, Detective Barron went to Shem's apartment and got Shem's consent to search
68 it. When Barron searched the apartment, Barron found numerous recreations of many
69 famous pieces of artwork as well as Shem's own original pieces. Barron discovered in the
70 apartment a painting that appeared identical to the one that Worcester had identified as a
71 copy of *Treason*. Barron seized the painting and brought it to the police station to be
72 examined by Worcester. Worcester concluded that the painting found in Shem's home was
73 the original *Treason* by Fletcher Yazoo that had allegedly been stolen from Marty
74 McCulloch's home.

75

76 While at Shem's apartment, Detective Barron also searched the storage cabinet located
77 near the front of two parking spaces in Shem's carport. The storage cabinet contained
78 boxes full of knick-knacks, old clothes, and additional art supplies. When looking through
79 a box, Barron found a folder containing a handwritten note that had the word "Treason"
80 on it with additional notes listing four names of private collectors who own works by the
81 artist Fletcher Yazoo. Barron seized the handwritten note and booked it into evidence.

82

83 The following day, Detective Barron received and executed a warrant for the arrest of
84 Shem for the theft of the painting *Treason* from McCulloch's home.

85

CHARGE

The Defendant is charged with one count of Grand Larceny.

Minnesota Pen. Code Sec. 484 (Theft by Larceny)

Every person who takes the personal property of another (and the property taken is of value exceeding \$950), without the consent of the owner, with the intention to deprive the owner of it permanently, is guilty of theft by Grand Larceny.

JURY INSTRUCTIONS (Relating to the Charge)

MINCRIM 1800 (Jury Instructions)

The defendant is charged with grand theft by larceny. To prove that the defendant is guilty of this crime, the State must prove that:

1. The defendant took possession of property worth more than \$950.00, owned by someone else;
2. The defendant took the property without the owner's or owner's agent's consent;
3. When the defendant took the property (he/she) intended to deprive the owner of it permanently or to remove it from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property; AND
4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.

MINCRIM 223 (Jury Instructions) Direct and Circumstantial Evidence

Facts may be proved by direct or circumstantial evidence or by a combination of both. *Direct evidence* can prove a fact by itself. For example, if a witness testifies he saw it raining outside before he came into the courthouse, that testimony is direct evidence that it was raining.

Circumstantial evidence also may be called indirect evidence. Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question. For example, if a witness testifies that he saw someone come inside wearing a raincoat covered with drops of water, that testimony is circumstantial evidence because it may support a conclusion that it was raining outside.

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. You must decide whether a fact in issue has been proved based on all the evidence.

MINCRIM 224 Circumstantial Evidence: Sufficiency of Evidence

Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the State have proved each fact essential to that conclusion beyond a reasonable doubt.

Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.

STIPULATIONS

Stipulations are considered to be part of the record. Prosecution and defense stipulate to the following:

1. Exhibits A and B may be reproduced in color, however there may not be any alterations in color between the two exhibits (e.g. brightness, tone, etc.).
2. At the time of arrest, there was sufficient probable cause to issue an arrest warrant for Evan Shem.
3. All physical evidence and witnesses not provided for in the case are unavailable and their availability may not be questioned.
4. Beyond what's stated in the witness statements, no other forensic evidence found was in this case.
5. All witness statements were taken in a timely manner.
6. Bernie Worcester and Jamie Sardegna are qualified expert witnesses and can testify to each other's statements and relevant information they would have reasonable knowledge of from the fact situation and witness statements.
7. Up until July 4 there is no chain of custody issue, and the painting belonging to Marty McCulloch was in fact an authentic Yazoo painting.
8. [nothing to see here, move on]
9. The search of Evan's apartment is a valid search and there may not be an objection to the validity of the search.
10. There are no known photographs of the original painting *Treason*, by Fletcher Yazoo.
11. Evan Shem wrote the note listed as Exhibit D and the note contained the names of private collectors of artwork by Fletcher Yazoo.

WITNESS STATEMENTS

WITNESS STATEMENT—Prosecution Witness: Detective Reese Barron

1 My name is Reese Barron. I am 42 years old and a detective with the New Prague Police
2 Department. My specialty, within the department, is crimes concerning artwork and cultural
3 property, which usually are theft and forgery. I have worked exclusively with art crimes for
4 16 years.

5
6 On July 5, I was contacted to respond to the theft of a painting that had been reported
7 stolen from Marty McCulloch's mansion. I drove straight there and, upon arrival, was
8 greeted by McCulloch, who looked upset. McCulloch showed me the gallery and the painting
9 and repeatedly insisted that it was a fake. McCulloch explained that someone must have
10 replaced the real painting of *Treason* with this imposter.

11
12 This was quite unusual to me. In most cases of art theft, owners are confronted with a
13 blank, empty space where their painting used to be. Here, however, it seemed as though a
14 thief was hoping McCulloch wouldn't notice. The thief expected to steal McCulloch's
15 painting, replace it with a fake, and continue business as usual.

16
17 Not having the alleged original to compare it to, I was unable to make a preliminary
18 determination as to whether the painting was a fake. I surveyed the perimeter of the
19 structure to locate any break-in points, but nothing I observed suggested an illegal entry. I
20 formed the opinion that this could have been an inside job. We dusted the doorknobs and
21 entryways for fingerprints and took them back to the lab for analysis. Although we found
22 some smudged fingerprints, none were identifiable.

23
24 I asked McCulloch if anyone was recently granted access to McCulloch's home, and
25 McCulloch told me that a large party had been held the previous day. I asked McCulloch to
26 go over the guest list with me. McCulloch seemed drew my attention to a young person by
27 the name of Evan Shem.

28 Apparently, Shem began working for McCulloch in the months leading up to the theft. Shem
29 had a talent for copying other artists' works and had consistently expressed an interest in
30 *Treason*. Furthermore, Shem's job the night of the party was to escort the guests through
31 the gallery, and when the last of the guests had viewed the art collection, Shem was
32 instructed to turn off the lights and lock the gallery door by arming the security system. On
33 the night of July 4, Shem had been the last person to leave McCulloch's gallery where
34 *Treason* was kept. From my investigation and my interview with McCulloch, I formed the
35 opinion that Shem was a person of interest in this case. Although I focused my attention on
36 Shem, the department continued to investigate other guests, but they found no promising
37 witnesses or suspects. We also dusted the frame for fingerprints, and none were
38 identifiable.

39
40 With McCulloch's permission, I took the painting to headquarters, and after a thorough
41 examination of it, art expert Bernie Worcester concluded the next day, that the painting
42 was indeed a fake. On that day, July 6, I went to Shem's apartment. When I arrived, I saw
43 someone leave apartment B with a trash bag. I approached the individual, who self-
44 identified as Charlie Gibbons. I asked, "Do you know Evan Shem?" Gibbons responded,
45 "Yes." I continued to ask Gibbons a few questions. According to Gibbons, Shem had

46 developed a hobby of replicating famous artwork. Shem possessed a respectable collection
47 of various paints and art supplies and would create almost perfect recreations of paintings
48 of various styles. I asked Gibbons, "What does Shem do with these paintings once they are
49 finished?" Gibbons was unable to provide a satisfactory answer. Gibbons said, "You know
50 what? I'm not exactly sure. Once the paintings are done, Evan simply moves on to the next
51 one. It's as though Evan's more interested in the process of creating the painting than
52 having a finished product." I asked Gibbons for permission to enter the apartment and look
53 around, but Gibbons declined.

54
55 On July 7, I returned to Shem's apartment. When I arrived, I asked Shem if I could search
56 the apartment. With a wave of the hand, Shem said "Sure, take a look around." I surveyed
57 the apartment and discovered that Shem's apartment was functioning as a makeshift art
58 studio. The place was covered with paintings, paint supplies, and art books. When I
59 explained why I was there, Shem seemed concerned and confused. Shem kept saying that
60 it was unbelievable that anyone would ever steal *Treason*. Also, Shem remarked how
61 *Treason* was not even that valuable in comparison to the rest of McCulloch's collection, thus
62 making the theft all the more senseless.

63 Furthermore, Shem readily admitted to attempting to make a replica of *Treason*. Shem
64 said, "Sure I attempted to make a copy of *Treason*. I make copies of all my favorite
65 paintings, but they're never as good as the originals. After all, I'm only a student. I'm still
66 learning."

67
68 After searching through Shem's extensive collection, I discovered a loose canvas painting
69 that looked strikingly similar to the one found in McCulloch's mansion. I had a suspicion
70 that the painting was the real *Treason*.

71
72 After conducting a full search of the apartment, I stepped outside to look around and be
73 sure I did not miss anything. At that time, I noticed a carport adjacent to the building. Near
74 the front of each pair of piggybacked parking spots, there was one storage cabinet. On the
75 ground, the parking spots were marked with white paint that said "Reserved" and an
76 apartment number, which was A, B, C and D. Shem lived in apartment B, so I proceeded
77 over to the spot marked "B." There, I ran into Gibbons, who was getting out of the driver's
78 side door of a car parked in one of apartment B's designated spots. Gibbons was sweating
79 although it wasn't hot outside. I wasn't sure if Gibbons was nervous or just sweats a lot. I
80 asked Gibbons if the storage cabinet belonged to apartment B, and Gibbons replied, "Yes." I
81 then asked if I could search the storage cabinet, and Gibbons replied, "The key is in the
82 kitchen." I believed that Gibbons was Shem's roommate, and I believed that Gibbons gave
83 consent to search the cabinet.

84
85 Then, I proceeded into the kitchen through the back door and found the storage key
86 hanging on a hook beside the refrigerator. Shem was sitting on the living room sofa and did
87 not see me take the key. When I opened the storage cabinet, I saw several containers that
88 were labeled neatly. I continued to look for something related to the theft of *Treason*. That
89 was when I found a folder inside a box labeled "art supplies" that contained a handwritten
90 note with "Treason" written at the top. The note listed four names. I seized this note as part
91 of my investigation. My research later revealed to me that these were names of private art
92 collectors who each owned Fletcher Yazoo paintings.]

93

94 I asked Gibbons if Gibbons knew anything about McCulloch's Fourth of July party. Gibbons
95 told me that Gibbons and Shem had both been there, and that Gibbons had seen Shem
96 running toward the gallery holding a backpack.

97
98 I seized the painting that I suspected to be *Treason*, brought it to headquarters, and
99 contacted Worcester. Worcester authenticated the painting as the real *Treason*. On July 8,
100 McCulloch met me at the police station to look at the painting taken from Evan's apartment.
101 McCulloch confirmed that the painting I seized from Evan's apartment was the real *Treason*.
102 I took a photograph of each painting and those photographs are listed as Exhibit A and
103 Exhibit B.

104
105 Based on this information, later that day I secured a warrant for Shem's arrest. I arrived at
106 Shem's apartment, arrested Shem, and went to the station for booking. Shem insisted I
107 was arresting the wrong person and that there had been some sort of mistake. In a
108 subsequent interview, I learned from T.M. Little that Little saw Shem at the Fourth of July
109 party with a backpack.

110

111

112

113

WITNESS STATEMENT—Prosecution Witness: Bernie Worcester

1 My name is Bernie Worcester. I am an art expert retained by the New Prague City Police
2 Department from time to time. In addition, I am the lead curator at MT's Fine Art Auction
3 House. I earned a master's degree in Art History from Notre Dame in 1989, and over the
4 past 25 years, I have attended numerous nationwide seminars, meetings, and forums on
5 appraising techniques. I am a well-known authority on art authenticity, and I have been
6 called on to authenticate paintings worth millions of dollars.

7
8 In my role as the curator of MT's Fine Art Auction House, I frequently receive requests from
9 people all over the world who seek to sell or consign paintings. For someone seeking to sell
10 a painting, we follow a routine procedure for evaluation and authentication before putting
11 anything up for auction. Upon receiving an initial request, we will provide an estimate to the
12 seller as to the price we expect to obtain for such a piece. If the seller remains interested,
13 we require the seller to bring in the painting and paperwork for inspection.

14
15 On July 2, we received a call by someone requesting to sell *Treason* by Fletcher Yazoo.
16 Although *Treason* is a relatively obscure painting, I estimated that it would sell for
17 \$100,000. There is currently a flourishing market for abstract paintings like *Treason*, and
18 collectors are willing to pay top dollar. Yazoo's recent death has resulted in a surge in the
19 market-price for his work. When artists die, their artwork often increases in value because
20 they will never produce more. *Treason* would likely sell for a relatively substantial sum. I
21 remember the caller was excited when I stated the expected dollar amount of the painting.
22 As I recall, the caller uttered, "Oh my goodness! \$100,000? I can't believe it's worth that
23 much!" Other than that, I do not recall anything particularly unusual about the caller or any
24 details about the sound of the caller's voice.

25
26 In evaluating the authenticity of the painting found at Evan Shem's apartment, I can
27 confidently say, in my expert opinion, that it is authentic. A careful visual examination is all
28 I needed to conclude that the painting found in Shem's apartment was the original *Treason*
29 by Fletcher Yazoo, as I will explain.

30
31 Authenticating artwork is an art in itself. Three common approaches are used to determine
32 a painting's authenticity; they are provenance, scientific testing, and connoisseurship. I will
33 address these three in order.

34
35 Provenance pertains to a painting's chain of custody or ownership. Here, given the relatively
36 short lifespan of *Treason*, its provenance is easy to trace. *Treason* was painted by Fletcher
37 Yazoo in 1977, and Edward McCulloch purchased it at an art show in 1978. Upon his death
38 in 1982, Edward McCulloch left *Treason*, in his will, to Marty McCulloch. Thus, McCulloch is
39 the last legitimate owner of the painting. Therefore, the provenance of *Treason* is
40 undisputed.

41
42 Scientific examination involves a variety of complex methods of investigation, such as
43 testing the chemical composition of paint samples and carbon dating. Here, we are dealing
44 with modern art. Testing the chemical composition of the paint would not be useful because
45 the painting was made with acrylic paint that has been commercially available since the
46 1940s, and carbon dating is usually only used for ancient artifacts. As such, scientific
47 testing is not necessary.

48

49 Connoisseurship is the method of studying and examining the unique and particular stylistic
50 techniques of particular artists. Connoisseurship involves a mastery and appreciation of the
51 art form, paying particular attention to the minute, nuanced details that contribute to a
52 painting's overall appearance. The precision and thoroughness of a connoisseur's analysis
53 lends credibility to their determinations of authenticity. As of now, no computer out there
54 can do the work of a trained and experienced expert.

55

56 There is ordinarily room for argument and debate in the realm of connoisseurship, as I've
57 spent many nights engaged in debate about the particular shading of Dali's clouds or the
58 curvature of Seurat's umbrellas, but here we have an obvious case. It is my professional
59 opinion that the painting found in McCulloch's home is a fake *Treason*; meanwhile, the
60 painting that was found in Shem's apartment is unquestionably the original *Treason* by
61 Fletcher Yazoo.

62

63 Like Jamie Sardegna, I too used traditional Morellian analysis of the two paintings found in
64 Shem's home and McCulloch's home, respectively. This method of analysis, named after
65 19th century Italian art historian Giovanni Morelli, involves identifying paintings by
66 examining the "signature" techniques of the artist in question, like brushstrokes, thickness
67 of paint, palette (range of colors), and the like. I then examine a painting to see if the
68 painting shares those unique facets, and if it does, I can authenticate it. A fraud may have
69 the "gist" of the original without the details I mentioned.

70

71 Fletcher Yazoo was known for his harsh and vigorous painting style. He would rarely simply
72 apply paint to the canvas with gentle brushstrokes. Instead, he tended toward a "painterly
73 style," where the brushstrokes are visible, and even attacked the canvas with his
74 paintbrush. The painting found in Shem's apartment ("Exhibit A") contains the
75 characteristics of authentic Fletcher Yazoo work. The pressure that Yazoo applied with his
76 brush to the canvas is evinced by the trailing remnants of paint that accentuate the primary
77 paint streaks. By pressing the brush up against the canvas, individual bristles of the brush
78 leave rough-edged, irregular lines in *Treason* as opposed to smooth and even lines. He
79 applied the paint thickly almost completely throughout. In my professional opinion, this is
80 the original *Treason*.

81

82 The painting found in McCulloch's home ("Exhibit B") has several of the particularities of
83 Yazoo's work, but there are telltale signs that it is a fake. First, the arrowhead-shaped white
84 paint just above the central circle-form has paint too thickly applied. It looks carefully
85 painted compared to Exhibit A, and Yazoo was not so careful. Just to the right of the
86 "arrowhead" there is a very small pinkish oval. In Exhibit A, however, there is no oval, but
87 rather a tiny pink "streak," clearly a remnant of red paint left on the brush when Yazoo
88 dipped it in white paint. In Exhibit B, it appears to me that the copyist added the pink oval
89 as an afterthought, trying to match the original.

90

91 Moving clockwise from the pink marking, at about three o'clock, there is a downward-
92 pointing white arrow-shape. Again, in Exhibit B, the white paint appears too thick, as if it
93 was carefully applied. By contrast, in Exhibit A, the same shape appears quickly or
94 vigorously applied, consistent with Yazoo's style. This tells me that the copyist painting
95 Exhibit B was stopping and starting to paint, as copyists have to do because they are
96 usually looking back-and-forth from the original (or from a photo) to their own canvas
97 during the painting process.

98

99 Finally, just below the downward-arrow shape is a white streak of paint that resembles a
100 white bone. In Exhibit B, the lower edge of the "boneshape" appears smoother than in
101 Exhibit A. The same shape in Exhibit A has the signature Yazoo rough edge.

102

103 *Treason* was kept in its original form: a small, lightweight canvas pressed into the original
104 wood frame. Neither the canvas found in McCulloch's gallery nor Shem's apartment has
105 markings or adhesive that would indicate either one was framed with tacks or staples. After
106 further examination of the frame, I have concluded that the original *Treason* could have
107 been very easily removed and replaced with the replica using no tools at all.

108

WITNESS STATEMENT—Prosecution Witness: Charlie Gibbons

1 My name is Charlie Gibbons. I am 23 years old and currently unemployed. For the past
2 three years, I worked for a hardware store, but I was recently fired due to a
3 misunderstanding. I was a good employee, but my boss just did not like me and, one day,
4 falsely accused me of stealing his sunglasses and fired me on the spot, without even
5 offering me an opportunity to defend myself.

6
7 Evan Shem and I have been friends since third grade. We were inseparable until our
8 freshman year of high school when we began to drift apart. Evan began hanging out with
9 the artsy theater-kids and got really into painting and drawing. We were no longer a part of
10 the same scene. Also, around this same time, I began shoplifting from local businesses and
11 getting into all kinds of trouble at school. I'm embarrassed about it today, but Evan
12 understandably kept some distance from me back then.

13
14 After high school, Evan went off to college, while I stayed in town and took odd jobs until I
15 landed the job at the hardware store. Evan and I had completely lost touch until Evan
16 moved back to town to start graduate school. Once we started hanging out again, it was
17 like we had never stopped. We did a lot of reminiscing about the good old days. I was also
18 quite impressed to hear about Evan's accomplishments and to see the artist Evan was
19 becoming. Evan even showed me some paintings. I couldn't believe how professional they
20 looked.

21
22 After the hardware store fired me, I lived off my savings for a few months, until I was
23 forced to move out of my apartment. Out of desperation, I asked if I could crash at Evan's
24 place for a couple weeks, just until I found a new job. I could tell Evan seemed reluctant,
25 but still Evan said "all right." Over the next few months, and with the economy the way it's
26 been, finding a job was tough. Evan generously allowed me to stay but eventually asked me
27 to contribute to the rent or leave. I decided to leave at the end of June, but I was crashing
28 on a friend's couch until a room became available for rent. In the meantime, I was storing
29 most of my belongings in my car's trunk, and some of my large belongings were still at
30 Evan's apartment. So, I still had the key to Evan's apartment.

31
32 When I was staying with Evan, I spent most of my days looking for a job. Otherwise, I was
33 hanging out, flipping through the pages of Evan's art books. I had never been interested in
34 art before, but seeing Evan work and watching paintings take shape allowed me to
35 appreciate the skill involved in creating such elaborate work. Evan had developed a unique
36 style, and I felt privileged to witness the creation of Evan's masterpieces.

37
38 Evan was also really good at copying classic artwork. Evan always said that the best way to
39 learn from the masters is to duplicate their work. I remember seeing Evan recreate many
40 famous paintings, sometimes completely from memory. The paintings Evan made looked
41 exactly like the paintings I saw in books and online. I was joking around one day after Evan
42 had painted a near identical replica of Magritte's *The Treachery of Images*. I said something
43 about whether any of those art snobs would be able to tell the difference between Evan's
44 fakes and the real thing. We shared a laugh, and I thought nothing of it, at the time.

45
46 I remember when Evan started working for McCulloch and wouldn't stop talking about this
47 one painting, called *Treason*. Evan managed to work it into almost all of our conversations,
48 so I learned a lot about this painting that I had never seen. One day, I think it was July 2, I

49 was at the apartment packing up some things, and I overheard Evan making a phone call to
50 someone about *Treason*. Evan asked about selling *Treason*. It seemed strange to me
51 because Evan had never mentioned that McCulloch wanted to sell the painting. Anyway, I
52 figured this had something to do with Evan's job at the mansion. What stood out as weird
53 to me was the way Evan referred to the painting as "my painting" on the phone. Evan even
54 made a phony sounding voice during the call, like a weird accent. Evan said something
55 about \$100,000 and sounded excited.

56

57 I don't recall asking Evan about the phone call or how much the painting was worth. In all
58 honesty, I had grown sick and tired of hearing about *Treason*. Also, if Evan was up to no
59 good, I wanted no part in it. Those days for me were long gone, in high school. I also knew
60 that Evan was upset with Professor McCulloch because the professor never paid Evan or
61 something.

62

63 When Evan and I attended McCulloch's party, I thought at least I would see this "incredible"
64 painting for myself. I figured that maybe if I saw the real painting in person, I would be
65 able to understand Evan's obsession. I decided to wear my tan trench coat to the party
66 because I thought it added style to my outfit, besides I had never been to a fancy party
67 before. Once we arrived at McCulloch's mansion, Evan took me down a long hallway and
68 into McCulloch's art gallery. When I saw the painting, I was not impressed. It was much
69 smaller than I expected, and it appeared like the paint was just thrown on in a hurry. I
70 couldn't understand why Evan was so interested in such a tacky, uninspiring painting.

71

72 That evening, when McCulloch asked everyone to go outside to watch the fireworks, I
73 couldn't find Evan. I watched the fireworks from the corner of the patio near the wall that
74 divided the living room and kitchen. At some point during the show, I turned around and
75 looked into McCulloch's mansion. Through the window, I could see Evan holding Evan's own
76 backpack, running toward the hallway that led to the gallery. At the time, I was
77 approximately 90 feet away with an unobstructed view. Looking back on it now, it definitely
78 seems strange, but at that moment I figured maybe Evan was doing some routine work. I
79 didn't go inside the mansion until the fireworks show was over and McCulloch invited us
80 inside for dessert.

81

82 I didn't see Evan the rest of that night, and after the party, I called a taxi to get a ride back
83 to Evan's Place. Evan had agreed to let me sleep on Evan's couch that night. When I got
84 back to the apartment, Evan was already asleep. The next morning, I asked Evan why Evan
85 had left the party without me, and Evan made an excuse about not feeling well.

86

87 A few days after the party, a police officer arrived at the apartment while I was throwing
88 some of my stuff into the trash and began questioning me about Evan's ability to recreate
89 paintings. The whole situation made me nervous, I don't like talking with authority figures.
90 I immediately began talking fast and boasting about how incredibly talented Evan was and
91 how Evan creates perfectly identical recreations of artwork right there in the apartment. I
92 thought I was doing a favor by speaking so highly of Evan's talent, but it must have made
93 matters worse.

94

95 [On July 7, I arrived at the apartment to grab the last of my things. I pulled into one of the
96 designated parking spots for Evan's apartment because there was no street parking, and I
97 was going to make a few trips back and forth to get my things. I knew Evan was home
98 because Evan's car was parked in the carport, but I didn't know the detective was searching

99 the apartment. When the detective approached me and asked me about the storage
100 cabinet, I confirmed that it belonged to Evan, and I said that the key was in the kitchen. I
101 knew where the key was because I had stored my bike in there when I was staying with
102 Evan. I did not think much of it, as I figured that Evan was inside and would need to give
103 the detective the key anyway.

104

105

WITNESS STATEMENT—Prosecution Witness: Marty McCulloch

1 My name is Marty McCulloch. I am 52 years old, and I have a PhD in art history from NYU. I
2 am a professor of art history at New Prague University. Many students there are training to
3 become studio artists, like photographers, painters, or sculptors, but are required to take
4 art history courses. In addition, I have inherited the family fortune, which my greatgreat
5 grandfather made during the railroad boom in the 19th century.

6
7 Artwork was an important part of my upbringing. My parents were always taking my
8 siblings and me to local museums and art galleries, and our home was elaborately
9 decorated with fine artwork.

10
11 As a teenager, I remember my father being particularly fond of this one painting called
12 *Treason* that hung in our living room. When I was younger, I never could quite fathom what
13 he found so compelling about this piece. He told me that he had bought it at an art show
14 directly from the artist, who himself was kind of a recluse. My father fell in love with
15 *Treason* the moment he saw it.

16
17 When my father passed away, I inherited not only the family fortune, but also many works
18 of art, including the bizarre little painting. Over the years, however, I have grown to
19 appreciate its quirky artistry and my father's amusement with it. It has since become one of
20 my most cherished heirlooms. It is not the most valuable painting in my collection by far,
21 but to me it has enormous sentimental value.

22
23 Throughout the years, I've put together an extensive art collection. Many paintings hang on
24 the walls in my home. But in order to store and protect my most cherished or most valuable
25 paintings, I have a designated a room in my estate as a gallery. The climate-controlled
26 room has no windows and only one entrance. Except for visits from art historians and the
27 like, I always keep my gallery locked. The only way to gain entry is to use a passcode on
28 the electronic keypad. A passcode is used to unlock and lock the door. Entering the code to
29 lock the door automatically arms the alarm system. Currently, I am the only person that
30 can unlock the gallery, as it has its own unique passcode that is distinct from the passcode
31 used to lock the doors. Evan knows the code to lock the gallery and has used the code
32 often.

33
34 Last fall, I had a student in my class named Evan Shem. Evan was a remarkable student,
35 with a brilliant mind, and exuded a true passion for artwork. Evan actively participated in
36 class discussions and would often visit my office to discuss matters further. Evan was a
37 talented painter, too. I was thrilled that a young person like Evan possessed a knack for
38 painting. I did have to occasionally remind Evan that it requires hard work to be a master
39 painter.

40
41 I decided to offer Evan an internship to help me maintain and preserve my collection. I
42 even mentioned to Evan that this could eventually turn into a paid position, but we never
43 discussed the details. I should emphasize how extremely protective I am over my art. When
44 I offered Evan the internship, I made sure Evan understood the significance of the position I
45 was offering.

46 Evan promised to take care of my paintings and ensure they were faithfully preserved. Evan
47 proved to be a competent and loyal intern, always on time and eager to lend a helping
48 hand.

49

50 I was surprised when Evan began expressing interest in *Treason*. It seemed peculiar to me
51 that of all the great artwork in my collection, Evan was most impressed with *Treason*. To be
52 frank, I have paintings worth millions of dollars, and I had never given much thought to the
53 monetary value of this painting. When I last checked, many years ago, it was worth a few
54 thousand dollars. My father had bought it for a few hundred. Again, to me, it was a family
55 heirloom with great sentimental value.

56

57 To Evan, however, it became something of an obsession. Nearly every day, Evan stood in
58 front of the painting, just gazing at it. Evan would be eager to analyze it and discuss it with
59 me. I must admit that these moments were rewarding for me, to see a young artist so
60 inspired by a painting. It also reminded me of when I would discuss the painting with my
61 father.

62

63 I have a tradition of hosting an annual Fourth of July party at my estate. Since Evan was
64 working for me that summer, I invited Evan to the party, including a "plus one" on the
65 invitation. Everyone seemed to have a great time. As the host, I was quite busy the entire
66 evening, making sure everything was going according to plan. I recall seeing Evan arrive
67 with a guest around 6:45 p.m. Upon their arrival, I introduced Evan to several guests, but
68 we didn't see too much of each other for the rest of the night. With a party of this
69 magnitude, it's nearly impossible to keep track of everyone's whereabouts.

70

71 I had also asked Evan to work as a docent that evening, escorting guests through the
72 gallery and sharing knowledge about the paintings. I instructed Evan to keep the gallery
73 open for viewing from 7:00 p.m. until 9:00 p.m. when the firework show would begin. Evan
74 was supposed to turn off all of the lights and lock the door, just as Evan had done before
75 leaving everyday over the course of the internship.

76

77 I am aware an art dealer with whom I have worked in the past, T.M. Little, is testifying on
78 the defendant's behalf. I am unsure what T.M. would know about *Treason*, as we had never
79 done business with regard to this painting. T.M. attended my party, even though we
80 recently ended our business relationship. I felt that T.M. had taken advantage of me when
81 T.M. had insisted that I invest over \$2 million in the purchase of three paintings by Anselm
82 Kiefer. I asked T.M. to allow me time to think it over, but before I knew it, T.M. was
83 demanding my share of the purchase price. I decided that I would no longer need T.M.'s
84 services. T.M.'s presence at the party was a surprise to me, but I do not like kicking guests
85 out and making a scene. We did not, however, acknowledge one another.

86

87 Sometime during the morning after the party, I went into the gallery, just like I do most
88 mornings. I looked at *Treason*, but it failed to elicit its familiar emotional response in me.
89 Something was strange about it, but I couldn't pinpoint what.

90

91 My suspicions were confirmed when I received a phone call from a local art gallery asking
92 about an offer to sell *Treason*. I thought, there must be some mistake, as I would never sell
93 *Treason*. I hung up from that phone call, marched straight into the gallery, looked at the
94 painting, and realized that this was not *Treason*. Some of the brushstrokes just seemed

95 more controlled than I remembered. This was a fake, a fraud. I immediately telephoned the
96 police.

97
98 An hour or so later, an officer arrived at my estate. We discussed the circumstances and
99 looked over the guest list. I had unlocked the gallery at the start of the party, and I trusted
100 Evan to supervise my guests, and arm the alarm system at 9:00 p.m. I noted that the
101 canvas painting was pressed into its original wood frame which would have made it
102 relatively easy to remove and replace.

103
104 After speaking with the police, I called someone who I knew would understand my pain:
105 Evan. Evan answered the phone and, to be perfectly honest, when I shared the news, Evan
106 didn't seem all that upset. As I recall, Evan said, "Oh no! That's terrible Professor
107 McCulloch. I can assure you I would never do anything like that." The reaction was odd, as
108 I was not calling to accuse Evan. I merely wanted empathy and support. If anything, I was
109 actually expecting Evan to be more upset than I was. After all, Evan was utterly obsessed
110 with *Treason*.

111
112 On July 8, Detective Barron had me stop by the police station to look at the painting taken
113 from Evan's apartment. When I looked at it up close, I knew it was the original. All the
114 details matched my memory of the painting, which I had been looking at since my teenage
115 years.

116
117 I concluded that Evan was somehow involved in this fiasco. I sent Evan an email saying
118 Evan's services would no longer be needed, and I refuse to let Evan return to my gallery.

WITNESS STATEMENT—Defense Witness: Evan Shem

1 My name is Evan Shem. I am 24 years old and a graduate student at New Prague
2 University. Since January, I've been working as an intern, curating the art gallery
3 maintained at the home of my art history professor, Marty McCulloch. My fascination with
4 art started while I was in high school. I realized that art, especially painting, was my one
5 true love.

6
7 Around the same time I developed an interest in art, I began to drift apart from my
8 childhood best friend, Charlie Gibbons. We became part of different scenes, so to speak.
9 Also, I was aware that Charlie had started to get in trouble with the law, stealing things at
10 school and around town. I didn't have time for that stuff. I just wanted to focus on my art.

11
12 After high school, I moved away to go to college, where I received my Bachelor of Fine Arts
13 degree. I did well in my classes. My passion for artwork far exceeded my interest in
14 anything else, and I just knew I would be a renowned artist one day. During undergrad, I
15 was living off student loans and credit cards, and I had acquired nearly \$50,000 in debt. I
16 knew that I would need a graduate degree to be taken seriously in the art world, but I was
17 worried that it would cost another \$75,000.

18
19 After college, I enrolled as a graduate student in New Prague University, located in my
20 hometown. I rented an apartment near the school, purchased new art supplies, and
21 planned to pursue my dreams.

22
23 While walking to school one day, I ran into Charlie. It must have been about four years
24 since we last talked. It was refreshing to see Charlie again, but after we had a long talk, it
25 was clear we still had little in common. I was still pursuing art, and Charlie hadn't changed
26 much since high school.

27
28 When Charlie asked to move in with me, I was conflicted. I really did not want to live
29 together, but I felt sorry for my old friend and let Charlie move in. I figured it'd be only a
30 couple of weeks until Charlie found somewhere else to go.

31
32 During my first semester of graduate school, I was enrolled in an art history class taught by
33 Professor McCulloch. From day one, I loved the class. The subject matter was thoroughly
34 captivating, and McCulloch was an unbelievable professor. I was excited to attend class
35 every day. When I would turn in assignments for class, Professor McCulloch and I would
36 have in-depth discussions of art and of my own work. In my free time, I would recreate
37 famous paintings from history. I must admit that I became quite good at this. I would bring
38 these paintings to Professor McCulloch's office for feedback and advice on how to improve
39 my abilities.

40
41 The following semester, I was offered an internship at McCulloch's home to oversee the
42 professor's vast art collection. Professor McCulloch said that after one semester, this
43 internship would become a paid position. Although I was not thrilled by the thought of
44 working without pay, I was willing to make the sacrifice to eventually be paid to do what I
45 love. I knew that unless I became a famous painter in record time, I would be bound to
46 have trouble making my student loan payments after graduation.

48 I knew how protective Professor McCulloch was of these paintings and felt privileged to be
49 given such an opportunity. I remember when I first saw the renowned collection. It was the
50 single most comprehensive and impressive private collection I had ever seen.
51

52 One painting in particular stood out. The first time I saw it, I was stunned. It had a hypnotic
53 quality. When I asked Professor McCulloch about the painting, it was explained to me that
54 the piece, titled *Treason*, was inherited from Professor McCulloch's father, and it was the
55 most meaningful painting in the entire collection.
56

57 I worked at Professor McCulloch's mansion two days a week for the remainder of my first
58 year of school and into the summer. The paid position I had been promised never
59 materialized. I asked Professor McCulloch about the offer one day while we were
60 contemplating *Treason*, and Professor McCulloch responded by telling me to be patient
61 because paid positions in the art world are hard to come by. This marked the turning point
62 in my relationship with Professor McCulloch. I knew that I would need to start looking for a
63 real job right away.
64

65 Charlie was still living with me. What was only supposed to be a couple of weeks had turned
66 into many months. I didn't mind it too much, though; Charlie had developed a curiosity
67 about art. Charlie frequently asked about the various paintings I was studying, and Charlie
68 appreciated my ability to recreate famous works of art. I brought most of my art supplies to
69 my apartment and did a lot of my work there. I remember that one day Charlie was so
70 impressed with my near-replica of Magritte's *The Treachery of Images*, that Charlie thought
71 that even art experts wouldn't be able to tell the difference between my fakes and the real
72 thing. It was humorous to me think of my work on that level.
73

74 Although it was fun having Charlie around while I did my work, Charlie's sudden interest in
75 artwork struck me as somewhat odd. Charlie even accompanied me as we traveled from
76 thrift store to thrift store looking for old canvas paintings to wash and paint over. I would
77 often wash old canvases and do my paintings on them because it was less expensive than
78 using new canvas, and it helped give the feel of the time period if the canvas was dated.
79

80 As much as I enjoyed Charlie, Charlie had undoubtedly overstayed the welcome. I gave
81 Charlie an ultimatum: Either start paying rent or move out on June 30. Charlie took it
82 rather well and promised to leave by the end of the month. When July 1 rolled around, and
83 all of Charlie's stuff wasn't out of my apartment, I told Charlie that it was OK to keep the
84 key for a few more days until all of Charlie's belongings were out.
85

86 Back in March, I decided to undertake the challenge of attempting a recreation of my
87 beloved *Treason*. I did not tell Professor McCulloch about this new project because I didn't
88 want the professor to be overly critical of my work. The difficulty I encountered in my
89 attempt to recreate it only increased my appreciation of the piece. My discussions with
90 Professor McCulloch regarding *Treason* grew richer and livelier. One day I commented on
91 how brilliant I thought the artist was and how his paintings must be really valuable. Much to
92 my surprise, McCulloch responded that *Treason* was not worth much money at all compared
93 to other works in the collection, insisting that the sentimental quality of the piece was what
94 gave it value. I just couldn't imagine that a painting as brilliant as *Treason* wasn't worth a
95 lot of money.
96

97 I thought it'd really impress Professor McCulloch if I found out that *Treason* was worth a lot
98 of money. I figured the best way to find its market value would be to contact MT's Fine Art
99 Auction House. I called the auction house and asked about the value of *Treason*. I was very
100 clear that my intention was to know the value of a painting. I did not refer to the painting
101 as mine, nor did I attempt to disguise my voice. I was overjoyed when they told me the
102 estimated value was \$100,000. I was so excited that I couldn't wait to tell Professor
103 McCulloch. I just knew Professor McCulloch would be delighted to hear the news. The
104 annual Fourth of July party was the next day, and I had planned on telling Professor
105 McCulloch then.

106
107 Charlie insisted on coming as my guest to the party. Charlie wore a ridiculous tan overcoat,
108 but I didn't say anything. I didn't want Charlie to feel uncomfortable. When we arrived at
109 the party around 6:45 p.m., we ran into T.M. Little, one of Professor McCulloch's good
110 friends that I have met several times when working in the gallery. Little asked why I
111 brought along my backpack to the party, and I informed Little that I brought my art
112 supplies, as I was hoping to sketch a scene of the guests watching the firework display.
113 Then, Professor McCulloch greeted both Charlie and me. Given the enormous crowd of
114 people at the mansion, I thought it would be a little inappropriate to talk about *Treason's*
115 value on the night of the party.

116 I decided to wait to tell Professor McCulloch on a day when we were alone.

117

118 I found it odd that Charlie seemed especially enthusiastic about *Treason*, insisting that we
119 go see it and inquiring as to how much it was worth. I don't recall telling Charlie how much
120 the painting was worth. Nonetheless, I showed Charlie the gallery and the painting. Charlie
121 seemed impressed, but I wasn't sure if Charlie was just humoring me.

122

123 I had been assigned to be a docent for the evening. Professor McCulloch asked me to escort
124 people through the gallery, talk about the pieces on display, and just generally monitor
125 things there. I was happy to help people appreciate the artwork. I spent a majority of the
126 evening in the gallery.

127

128 As the fireworks display began, and everyone went outside, I escorted the last guests out of
129 the gallery and joined them for the show. That was when I suddenly realized I had
130 forgotten to lock the doors to the gallery. I was instructed by Professor McCulloch to lock
131 and secure the gallery at 9:00 p.m. when the fireworks were scheduled to begin. I couldn't
132 have been gone more than ten or fifteen minutes when I realized I had forgotten to secure
133 the gallery. I rushed back inside and ran to arm the gallery door. I opened the door to
134 quickly ensure no one was inside. Once I saw the gallery was empty I closed the door and
135 punched in the security code to lock and arm the security system. Once everything was
136 secure, I headed back outside. On my way outside, I passed T.M. Little in the foyer, and
137 Little asked how my sketch was coming along. I knew my supplies were still untouched in
138 my backpack that I was carrying but I politely replied,
139 "Great." I hurried outside but I never really had a chance to start my sketch.

140

141 Shortly after the fireworks display I tried to find Charlie. I had agreed to let Charlie crash on
142 my couch for the night but I wasn't going to spend all night looking. It had been a long
143 evening and I was ready to go with or without Charlie.

144

145 The following day, I received a call from McCulloch, who said that someone stole *Treason*.
146 Upon hearing the news, I went into a state of shock. Believe me, I was more upset than
147 Professor McCulloch. I assured Professor McCulloch that I had nothing to do with the theft,
148 as I had been in charge of the gallery the entire night, and I was certain that not a single
149 painting had been disturbed.

150

151 When Detective Barron arrived at my apartment on July 7, I was shocked. When the
152 detective asked to search the apartment, I said, "Sure." I had nothing to hide. Charlie
153 mentioned that a police officer had come by the day before when I was at a family
154 gathering, but I presumed the officer was just doing routine questioning of people who
155 were present at McCulloch's party. I did not understand how McCulloch could believe I
156 would ever do such a thing. I did paint a replica of *Treason* a few months ago, but that
157 painting was still in my apartment. Detective Barron took the replica I had made.

158

159 [As Detective Barron was searching my apartment, I sat in the living room and waited. I
160 was stunned to learn after the search that the detective went into my storage cabinet in the
161 carport outside without my permission, especially because the cabinet was locked. I later
162 found out that Charlie, who was no longer living with me, told Detective Barron where the
163 key to the cabinet was located, and while I sat in the next room patiently waiting for the
164 search of my apartment to end, Detective Barron took my key and went through my
165 cabinet. I would have never consented to the search of my cabinet, as that is where I have
166 many keepsakes and personal items. My understanding was that the search was going to
167 be conducted inside my apartment only.

168

169 The notes that Detective Barron found were just part of my research into *Treason*. I looked
170 up some Yazoo collectors to see if *Treason* was worth more than some of Yazoo's other
171 works. I had planned to contact them but never did. I thought the professor would be
172 happy to know that *Treason* was, perhaps, Yazoo's most valuable piece.

173

174 On July 8, I found out that I had been fired from my internship with Professor McCulloch via
175 email. I was devastated. I was planning to quit once I found a job, but I did not want my
176 relationship with the professor to end on bad terms. On that same day, I was arrested for
177 the theft of *Treason*.

WITNESS STATEMENT—Defense Witness: Sidney Ogden

1 My name is Sidney Ogden, and I am 24 years old. I work as a librarian at the New Prague
2 Public Library, and on the weekends, I work a second job for a valet company to make
3 some extra money. I attended school in New Prague, along with Evan Shem and Charlie
4 Gibbons. After high school, I went out of state for college and obtained my bachelor's
5 degree in English literature, followed by a master's in library science. I have always enjoyed
6 reading great works of literature. I also found a passion for acting my sophomore year,
7 which was when Evan and I became good friends.

8
9 Before high school, Charlie and Evan were inseparable, but when Evan and I began
10 spending time together, Charlie was no longer around. I overheard that Charlie mingled
11 with the wrong crowd, but I never really saw for myself. I remember Evan talking endlessly
12 about this newfound love of art. As a fellow art enthusiast, Evan and I had much in
13 common. Evan even joined the drama club, and we co-starred in a rendition of The Scottish
14 Play in our junior year. I have some great memories of those days. It seemed as though we
15 spent every waking moment with one another, reciting lines, working on technique, and
16 analyzing Shakespeare's every word. Evan was a great companion. I would even venture to
17 say that Evan is one of the most reliable, hard-working, and honest people I know.

18
19 Evan always had a knack for art, which is why it comes to no surprise that Evan has a
20 talent to replicate famous paintings. When we were in high school, Evan could imitate
21 nearly anyone or anything, always having an eye for the minutest details. Evan had the
22 natural ability to write poems and sketch scenes that everyone would believe were works of
23 professionals. I saw something special in Evan from the moment we met, as did many other
24 people we knew.

25
26 Evan and I had lunch at Evan's apartment back in February. Charlie was not yet staying
27 there, but I knew that Charlie had asked Evan to stay because we discussed it that day.
28 Evan was reluctant to let Charlie move in because of the fear that Charlie did not have
29 much going on, and if Evan helped Charlie too much, Evan feared that Charlie would
30 become lazy and complacent. At the time, Evan was submerged in artwork. Since Evan was
31 not spending much time at home, I suggested that it might be a good idea to have
32 someone around the apartment.

33
34 Evan and I spoke briefly about art school and the new internship in Professor McCulloch's
35 art gallery. When Evan spoke of the collection, I could hear how much Evan cared for each
36 and every piece of art. It was as though Evan cared for the art as much as its owner. I
37 remember thinking that Professor McCulloch's art collection was in good hands; if you were
38 going to trust anyone with millions of dollars and family heirlooms, it would be Evan.

39
40 Before I left, Evan had thought it over and told me that Charlie would likely move in for a
41 while, at least until Charlie found work. Evan didn't really want a roommate, but Evan
42 wanted to help an old friend until Charlie figured things out. I remember thinking that
43 Charlie was lucky to have a friend like Evan. That was when I knew that my good friend
44 Evan from high school hadn't changed one bit.

45
46 After hearing about how amazing Professor McCulloch's collection was, I was more than
47 delighted when I found out that the company I work for on the weekends was providing
48 parking attendants for the annual Fourth of July party. I was hoping to catch a glimpse of

49 the professor's amazing paintings. The night went by smoothly. I greeted everyone who
50 came and left the party. Evan and Charlie arrived relatively early, as Evan had to prepare
51 the gallery for the guests.

52
53 Later that night during the fireworks display, I stood on the covered porch, as there were
54 no cars to attend to. From the covered porch, I could see through the massive living room
55 clear through the rear glass walls to the back of the house where the 200 or so guests
56 stood outside waiting for the firework display. Charlie was standing near the back of the
57 crowd close to the living room and kitchen. I had to strain to see the fireworks in the
58 distance through the glass walls from the front of the house, but I caught some glimpses of
59 them. A couple of minutes into the fireworks, I saw Charlie leaving the hallway where the
60 gallery is located. I thought it was strange that Charlie was wandering around in Professor
61 McCulloch's home when everyone else was outside, but I assumed Charlie must have
62 gotten lost looking for a restroom, as I did earlier when I was trying to find the restroom
63 near the stairs. I did not see Charlie's hands but I did remember that Charlie was wearing a
64 tan trench coat. I found that strange on a beautiful summer night. I resumed trying to
65 catch the fireworks and didn't see where Charlie went. That McCulloch really knows how to
66 put on a show!

WITNESS STATEMENT—Defense Witness: T.M. Little

1 My name is T.M. Little. I am 52 years old, and I have been working as an art dealer for
2 nearly 30 years. I began my art career in Amsterdam, where I spent several years working
3 as a curator at the Rijksmuseum. Eventually, I earned a fellowship under the noted Austrian
4 dealer Thaddaeus Ropac. In the mid-1990s, I returned to the States and started my own
5 business, buying and selling artwork for high-end clientele. As an art dealer, I travel all
6 over the world, frequenting auctions, exhibitions, and artists' studios in search of exciting
7 new works, little-known treasures, and good buys for my clients.

8
9 I met Marty McCulloch shortly after I started my own business, and ever since our first
10 transaction, we have been loyal business partners and lifelong friends. We often buy and
11 resell contemporary artwork as partners, investing together and sharing the profits and
12 losses as they come. Before a recent falling out between the two of us, I would visit Marty's
13 mansion often, both for business and social reasons.

14
15 Back in May of this year, Marty and I had set out to purchase works by a famous German
16 painter and sculptor by the name of Anselm Kiefer. I was concerned that I did not have the
17 bankroll to fund such an investment on my own, but I was sure that we would be able to
18 resell the art and make a profit instantly, as long as we displayed the pieces at Marty's
19 annual Fourth of July soirée. Many of Marty's guests would also attend an event at the
20 Swing Auction Gallery at the end of July, which is the biggest art auction in all of Scott
21 County, and if we displayed the Kiefer pieces at the party, we would be able to expose the
22 artwork to potential buyers, thus building interest. Marty agreed to my request, just as my
23 dear friend has many times over the past 20 years, and I quickly made an offer on the
24 Kiefer paintings.

25
26 Much to my surprise, once I had already transferred the funds and completed the purchase,
27 Marty withdrew from our deal. I was expecting Marty to reimburse me for 50 percent of the
28 cost of this purchase, as this is our normal course of dealing. If I'd known that Marty was
29 going to back out, I would have never fronted the money for those paintings. This really
30 puts me in a financial bind until I get those paintings sold. I emailed Marty asking for an
31 explanation, and I never received a response. For the first time in 20 years, I was let down
32 by my dear friend Marty McCulloch.

33
34 Although I was upset about the recent deal that went bad, I still decided to attend the
35 Fourth of July party, as I had too many clients who would be there, and I could not afford
36 to allow other art dealers a chance to mingle with them and possibly lose their business. I
37 was not surprised when Marty ignored me at the party. I did not even receive a simple
38 greeting. I was unsure if this was intentional, as I could chalk it up to Marty's being busy;
39 after all, it was quite a party.

40
41 I have met Evan Shem at Marty's mansion on several occasions. Evan always came across
42 as a nice kid, a hard worker, and Marty had boasted about Evan's talent as well. Evan,
43 Charlie Gibbons, and I arrived at the party at the same time. This was the first time I met
44 Gibbons. My first impression of Gibbons was not the best. Gibbons' clothes appeared
45 wrinkled, plus Gibbons seemed nervous and didn't look me in the eye when we shook
46 hands. I remember thinking that Gibbons was going to stick out like a sore thumb in this
47 party full of the high society of New Prague.

49 I did see Evan with a backpack, and I asked what it was for. Evan told me that the bag
50 contained art supplies, as Evan was planning to sketch a scene of the party guests enjoying
51 the firework show later that evening. Throughout the party, as I mingled with my clients, I
52 observed Evan offering explanations of the artwork to guests as they went through the
53 gallery. Evan was courteous, polished, and well versed on the origins and history of each
54 piece of art in Marty's collection.

55

56 In fact, the last time I saw Evan was during the firework show. I stepped inside to use the
57 restroom near the stairs and we crossed each other's paths in the foyer. Evan was walking
58 out of the gallery hallway adjacent to the restroom. I asked Evan how the sketch was
59 coming along, to which Evan replied, "Great!" I cannot testify as to whether or not Evan
60 was acting suspiciously, but I can say that I did not notice anything in Evan's hands or
61 anything unusual. I was shocked when I found out that Evan had been arrested.

WITNESS STATEMENT—Defense Witness: Jamie Sardegna

1 My name is Jamie Sardegna. I am currently employed by Art Experts, Inc., in New York
2 City, where I have worked for the past 15 years. I have a master's in art history from NYU
3 and provide professional research and art analysis to anyone who needs a certificate of
4 authenticity. My specialization in grad school was modern abstract painters, and I did
5 become very familiar with the work of Fletcher Yazoo, among others. Yazoo had a cult
6 following but was reclusive and considered obscure during his lifetime, only occasionally
7 showing works in public. I have seen firsthand what relatively little there is of Yazoo's work.
8 I once briefly viewed *Treason* three years ago when I was brought as a guest to Marty
9 McCulloch's Fourth of July party.

11 As for art authenticity, many art authenticators advertise bogus "secret methods" or "secret
12 computer technology," but the fact is that there are no secret methods, and for now,
13 computers cannot authenticate art. At most, material tests would show whether or not a
14 part of the painting was repainted or if an older painting is a forgery because of the
15 materials used. Here, we have a modern acrylic painting, and material tests will not be of
16 any use in the authentication. By and large, authenticity is determined by examining the
17 painting itself, possibly with the help of special digital image analysis software.

19 Now that I have explained the methods used by the Art Experts, I can offer some insight
20 into the painting in question: *Treason*. I was asked to examine the painting found in Evan
21 Shem's apartment as well as the painting found in Marty McCulloch's art gallery and to
22 verify which painting was, in fact, *Treason* by Fletcher Yazoo. In my expert opinion, the
23 painting in Shem's apartment is not a genuine Yazoo, and the real *Treason* is the painting
24 that was in McCulloch's possession the entire time.

26 I find it hard to believe that any art expert would conclude a painting is authentic before
27 taking the necessary steps of authentication. Art authenticators use the three common
28 approaches to determining a painting's authenticity, all more vigorous than a cursory, visual
29 examination, which are: provenance, scientific testing, and connoisseurship. Based on the
30 prosecution art expert's testimony, the determination of authenticity was made first,
31 followed by an examination of connoisseurship. This expert failed to base the conclusion on
32 facts, but rather based the facts on a conclusion.

34 It is true that provenance and scientific testing are not issues in the case of *Treason*. We
35 know that the painting's chain of custody was not broken, as Edward McCulloch purchased
36 the painting at an art show from the original artist just one year after the painting was
37 finished, and Marty McCulloch directly inherited the painting from Edward. We also know
38 that the painting was finished by Fletcher Yazoo in 1977, and because the painting is not
39 that old, scientific examination would not provide much insight. The chemical composition of
40 paint samples would not differ today from 30 to 40 years ago.

42 However, my concern comes about with connoisseurship, which is the method of studying
43 and examining the stylistic techniques of the artist. In this case, Fletcher Yazoo has a
44 distinct style, which makes it harder to replicate his work. In order to authenticate *Treason*,
45 I spent a tremendous amount of time studying the painting, along with other works by
46 Yazoo, and referencing images with the assistance of digital image analysis software. I

47 found several inconsistencies in the painting found in Shem's apartment that I did not find
48 in the painting found in McCulloch's gallery.

49

50 I realize that my determination is in direct contradiction to the determination made by
51 Bernie Worcester, the New Prague City Police Department's hired art expert; so, please
52 allow me to explain the method I used to make my determination.

53

54 Here, at the Art Experts, we use a method called Morellian analysis, in which we determine
55 whether a painting is false or genuine by examining idiosyncrasies or repeated stylistic
56 details of a particular artist's work, which we think of as the characteristic "hands" of the
57 painter, through scrutiny of minor details that reveal an artist's subconscious touches. One
58 important factor of this analysis is the use of brushstrokes and the application of paints.
59 When looking closer at these brushstrokes, with the help of digital image analysis, we can
60 see everything from the amount of pressure applied to each individual stroke, to the angle
61 in which the painter's hand was working at any given time.

62

63 My analysis of the painting found at McCulloch's mansion on July 5 ("Exhibit B") shows me
64 that it is a genuine Fletcher Yazoo. First and foremost, all of the brushstrokes, to me,
65 appear to be vigorous and quickly applied to the canvas, consistent with Yazoo's style. In
66 almost every place, I see indicators of brush-bristles leaving rough edges of paint,
67 especially in the white streaks. The arrowhead-shape in the center of the painting does
68 appear thicker than the corresponding shape in Exhibit A. The same is true for the so-called
69 "downward arrow" that Worcester discusses. Worcester is correct that copies tend to show
70 stop-start motions, since copyists may need to look away from the canvas. But my analysis
71 is that the thicker paint areas in these two "arrow" shapes are in themselves consistent with
72 Yazoo's trademark style of unevenly applying paint in vigorous motions.

73

74 The pink oval mentioned by Bernie Worcester looks like a remnant of red paint mixed with
75 white on the brush. It is certainly possible that it is an "afterthought" and an "add-on" of
76 pink paint by a copyist, but that interpretation is too subjective. Under the close analysis I
77 did of these areas of the painting, I can say, at best, that it is inconclusive whether or not
78 that pink oval is an add-on. Even if it was, Yazoo himself could have added it. He would add
79 a little spontaneous detail from time-to-time if he was inspired.

80

81 Finally, the lower-right white "bone-shaped" streak in Exhibit B mentioned by Worcester
82 does have fewer brush-bristle markings of white paint around the lower edge than in Exhibit
83 A. But no art expert could say that Yazoo's brushstrokes were 100 percent identically harsh
84 in every instance. The edge appears to me to be rough enough to be authentic Yazoo. By
85 contrast, that same edge in Exhibit A could be the work of a copyist trying too hard to
86 meticulously add "bristle marks" in order to make it more "Yazoo-like." In other words, this
87 particular detail is inconclusive at best. With regard to the painting found in Shem's
88 apartment, I have formed the professional opinion that this painting is a very good copy of
89 Yazoo's *Treason*, but a copy nonetheless, while the painting found in McCulloch's gallery is
90 the original *Treason*.

PHYSICAL EVIDENCE

Only the following physical evidence may be introduced at trial. The 5 prosecution is responsible for bringing:

1. Exhibit A, a photo of the painting found at Evan Shem's apartment
2. Exhibit B, a photo of the painting found at Marty McCulloch's mansion
3. Exhibit C, a diagram of Marty McCulloch's mansion
4. Exhibit D, a note found during the search of Evan Shem's storage cabinet

EXHIBIT A
Photo of the Painting Found at Evan Shem's Apartment



EXHIBIT B

Photo of the Painting Found at Marty McCulloch's Mansion



EXHIBIT C
Layout of the First Floor of Marty McCulloch's Mansion

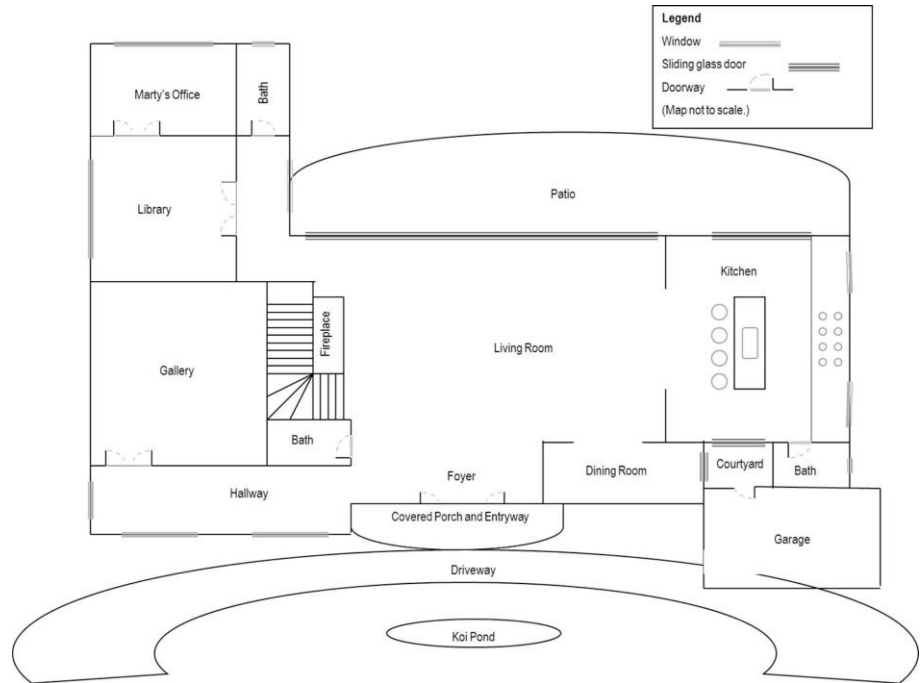


EXHIBIT D

Photo of the Note Found at Evan Shem's Storage Cabinet



CREDITS

Case Materials adapted from:

People v. Shem
Constitutional Rights Foundation, California