

Public Defenders Writing Workshop

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Agenda

Part 1: (8:45-9:45) Introduction and Invention

- A very brief history of rhetoric
- Using heuristics (questions) to develop ideas
- Using writing strategies to develop ideas


Part 2: (10:00-10:45) Arrangement

- Organizing and ordering elements
- Plot, character, setting, and point of view

Part 3: (10:50-11:35) Style

- Developing eloquence in writing
- Editing your own writing

Part 1: History of Rhetoric

 *“Rhetoric is useful because things that are true and things that are just have a natural tendency to prevail over their opposites, so that if the decisions of judges are not what they ought to be, the defeat must be due to the speakers themselves, and they must be blamed accordingly.”*
(Aristotle, *Rhetoric*, Book 1, Chapter 1)

The first teacher of rhetoric was purportedly a man named Corax who lived in Ancient Greece, who taught his student Tisias the art of persuasion. The goal of rhetorical instruction was primarily to instruct individuals in how to best plead cases in court. Tisias is thought to have been a speechwriter, who composed speeches for others to deliver.

Later traveling instructors moved from town to town teaching people rhetoric; they became known later as the Sophists. With the rise of democracy, public speaking became an important skill, since citizens needed to use oral arguments to engage in political and public life. Later rhetoric became the core of education for young men—prepared them to be active citizens in judicial and legislative arenas, and people like Isocrates set up schools to teach rhetoric to young boys and men.


By 322 BC, Aristotle formalized rhetorical instruction in his book, *Rhetoric*. He divided rhetoric into three modes: political, forensic (or legal), and epideictic (or ceremonial). Aristotle also outlined the three artistic proofs: ethos (credibility and authority), pathos (emotions and values), and logos (logical reasoning).

Later, the Romans organized rhetoric into five “canons,” including:

- 1) Invention – developing arguments, evidence, and proofs
- 2) Arrangement – organizing your argument or speech
- 3) Style – using appropriate vocabulary, tone, etc.
- 4) Memory – using techniques to help you memorize a speech
- 5) Delivery - performing a speech effectively

Rhetorical instruction differs from other forms of inquiry in that it focuses on persuasion of an audience. The primary concern is always *appropriateness* [*to prepon*] and *timeliness* [*to kairon*] with regard to the situation and audience at hand, rather than universal, “one-size-fits-all” rules.

2: Invention

 *“Rhetoric may be defined as the faculty of observing in any given case the available means of persuasion.”*
(Aristotle, *Rhetoric*, Book 1, Chapter 2)

Rhetorical Heuristics: Questions for Invention

The first type of invention involves heuristics, or problem-solving tools. These generally come in the form of questions you can use to guide your inquiry or planning.

The rhetorical situation

- **Audience:** who is my audience? What are their values and beliefs? What evidence will be most persuasive to them?
- **Purpose:** what is the purpose or problem that I am trying to address?
- **Context:** how do the location, time period, current events, etc. shape my case?

The “artistic proofs”

- **Ethos:** how can I build credibility for myself and my client?
- **Logos:** what claim do I want to make? what reasons can I offer? What evidence do I have?
- **Pathos:** how can I appeal to the audience’s emotions, values, and beliefs (i.e. justice, fairness, sympathy, etc.)

Stasis Theory

In the 2nd century BCE, Hermagoras developed stasis theory as a tool for rhetorical invention: developing ideas and arguments. Stasis theory consists of the following questions:

- **Fact:** What happened?
- **Definition:** What is it? How should it be defined?
- **Quality:** Is it good or bad? Honorable or dishonorable?
- **Jurisdiction:** What should be done about it?

As an inventional tool, stasis theory can help you to pinpoint the nature of a problem or to determine how you might focus your Statement of Facts. For example, the answer to the “what happened” question might have to do with the crime in question, with the trial, or with some aspect of the defendants personal history.

For instance, a lawyer defending someone accused of murder might pose the following questions:

- **Question of fact:** did the defendant murder the victim? did the court make an error?
- **Question of definition:** how serious was the error? Should this be first-degree or second-degree murder?
- **Question of quality:** was he justified in murdering the victim? Did the judge/jury act appropriately?
- **Question of jurisdiction:** should there be a retrial?

We might also add these additional questions:

- **Question of causation:** what caused him to murder the victim? What caused the judge/jury to err?
- **Question of consequence:** what are the effects of the murder? Of the judge's error?

Writing as Invention

A second type of invention activity involves writing itself as a way to generate ideas. These strategies can be effective not only at the beginning of a writing project, as ways to help you whenever you get stuck. Whenever I'm having trouble articulating my point or developing a claim, I try one of these exercises to get me back on track.

Freewriting – Sit down and start writing. Don't worry about your word choice or grammar or where you are going—just write. You might use some of the invention questions above to get started. Write for 5 or 10 minutes, then stop and go back over what you have written. Freewriting can be a great way to help you clarify your ideas and arguments or to generate new ideas.

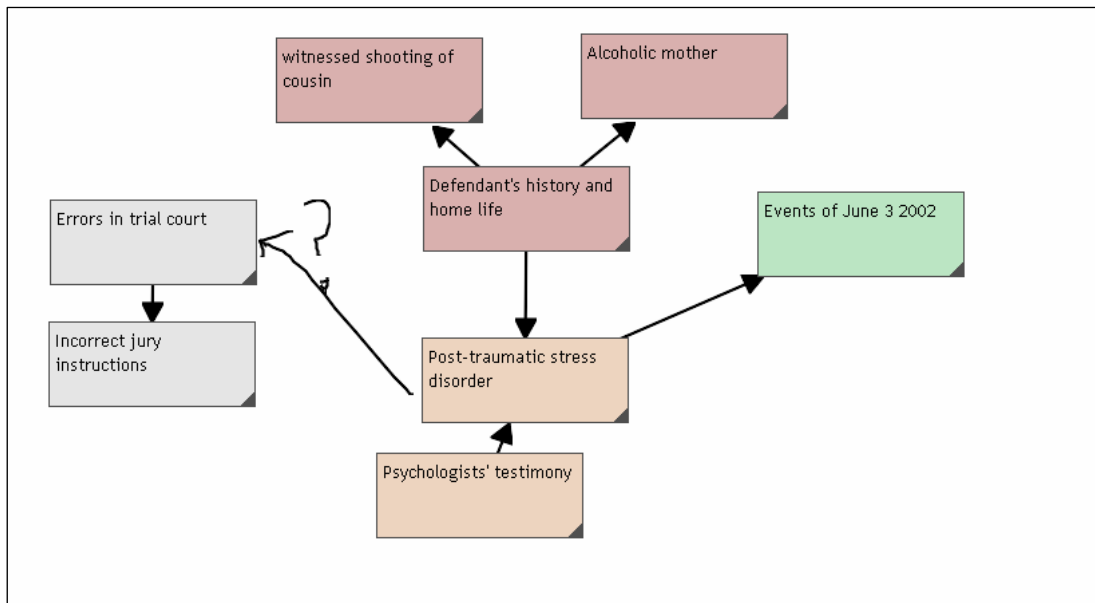
Looping: Looping is a variation on freewriting. Begin with a regular freewrite. When you are finished, go back and read over what you have written, highlighting one or two statements that seem really important. Then, write for another 5 minutes based on that idea. You can continue in this manner until you feel you've come up with a solid sense of how you will focus your writing.

Outlining: This is probably the most familiar planning activity for most of us: use numbered lists to outline the sections and sub-sections of your Statement of Facts. However, note that you can do this activity either **before** or **after** you've written a draft (see "Reverse Outlining," below).


Write one sentence: Distill your argument or story into one sentence or one paragraph. This will help you to narrow down your focus.

Journalistic questions: Most of us are familiar with the journalistic questions: Who? What? Where? When? Why? Freewrite a short paragraph that answers these questions—as though you were writing a short news report about your case.

Concept Mapping – If you are a visual thinker, you might prefer to sketch out your ideas using a concept map or cluster map. Using a piece of paper or a digital mapping tool (try www.thinkature.com). Draw circles or squares to represent ideas stemming out from key topics or issues. Again, you might use some of the rhetorical invention questions above to help you get started.



Part 3: Arrangement

 “A speech has two parts. You must state your case, and you must prove it.” (Aristotle, *Rhetoric*, Book 3, Chapter 13)

The next step in rhetoric is arrangement: selecting and organizing facts, evidence, ideas, and arguments into an appropriate order.

The Ancient Romans, including Cicero and Quintilian, divided legal speeches into the following sections:

- the introduction, or *exordium*
- the statement of the facts, or *narratio*
- the outline of the major points in the argument, or *divisio*
- the proof of the case, or *confirmatio*
- the refutation of possible opposing arguments, or *confutatio*
- the conclusion, or *peroratio*

Notice that this organization, from back in the 1st Century BC, isn't all that different from the appellate brief:

Roman Arrangement	Appellate Brief
Introduction (exordium)	Statement of the Case and Grounds for Review
Statement of the Case (narratio)	Statement of the Facts
Outline of Argument (divisio)	Argument
Proof of Case (confirmatio)	
Refutation (confutatio)	??
Conclusion (peroratio)	Conclusion

We'll focus in this workshop on the second part, the Statement of Facts, using terms drawn from literary analysis.

Plot

The typical plot includes the following elements:

1. **Initial situation** - the beginning. It is the first incident that makes the story move.
2. **Conflict or Problem** - goal which the main character of the story has to achieve.
3. **Complication** - obstacles which the main character has to overcome.
4. **Climax** - highest point of interest of the story.

5. **Suspense** - point of tension. It arouses the interest of the readers.
6. **Dénouement or Resolution** - what happens to the character after overcoming all obstacles/failing to achieve the desired result and reaching/not reaching his goal.
7. **Conclusion** - the end result of the climax

While a statement of facts might not follow this exact organization or order, you might still think about some of these elements. For example, how can you create suspense? Is there a climax to the story, and what should it be? The crime itself? The trial? What should be the initial situation or the opening scene? Again, could that be the crime itself? Should it be the trial? Some aspect of the defendant's past or childhood?

Drafting/Revising Activities:

- **Storyboarding:** Sketch out the events using a “storyboard”—kind of like blocks in a comic strip. What events will you depict in your sketches? What ones will you leave out? How will you order them? Then consider how you might arrange the blocks in a written narrative.
- **Reverse Outlining:** Outline the events that occur in your drafted Statement of Facts. Identify the places where you or others involved had to make a decision of some kind. For each decision point, brainstorm on the alternatives that could have been pursued. What other options were available? How do these other options affect the way that you think about the event now? Have you looked back at the event that you're writing about and thought, "Gee, I wish I had done that differently"? Add some depth to your narrative by fleshing out alternatives as well as how and when they became important.
- **“So What?”:** As you read through your draft, ask the “so what” question for each paragraph or event. Why are those details included? Why are they important? Why did they matter then, and why do they matter now? If the “so what” isn't clear in the draft, consider whether you need to make it clearer to the reader.
- **Translation:** Describe the events that occurred for a different audience. How would your narrative change if it is written for readers of a newspaper or magazine, for a colleague, or for a friend? What would you leave out? What would you add? What would you describe in different language and style? How would the points that you emphasize change? Once you've thought about the differences, return to your working draft. Are the points that you DO include right for your audience? Are there parts of your alternate version that can be added to your working draft? As you revise, think about the details in the narrative fit your audience in particular.

Setting

- Describe the scene or scenes in which the events occurred. What details are important? How can you include details to help the reader visualize the events?

- Which scenes are important for your narrative?
- Which scene is best to start with? The crime itself? The trial? The defendant's childhood or past?

Characters

Consider the characters in your narrative. How does the Statement of Facts help to establish characters? How does this contribute to the rhetorical effect of the case? Can you flesh out the characters more to help the audience identify with them?

Revising Activity: Think of the people involved in your case as though they were characters in a story. Write a “character sketch” for each one. Then, highlight elements or ideas of each character that you might want to convey in your statement of facts. Once you have a working draft, you can go back to these character sketches and consider whether you might want to add details to flesh them out.

Point of View

- Consider whose point of view you are writing from in each section or paragraph. Is it an evidentiary point of view? The defendant's point of view? A witness' point of view? An omniscient observer? What effect would changing the point of view have on the narrative? Try rewriting some paragraphs using a different point of view.

Consider the following passage as an example. What point of view is being used? What other points of view might be possible? What difference might this make for the case?

- Mr. Herring could not see what was happening because of the half wall dividing the kitchen and living room. There was a bag of cocaine on the counter top. Mr. Herring grabbed the bag of cocaine and hid it under a bag of clothes so Russell wouldn't get it. Mr. Herring thought there were three bags of cocaine all together – the one on the counter that he hid under the clothes (the “uncooked” bag), the bag of “cooked” or crack cocaine, and another bag that he did not see. (Tpp. 370-71, 441-43) Mr. Herring started running down the stairs and heard a shot. He ran to his car, fumbling with his keys. He also had his cell phone in his hand. He did not have anything under his arm. He looked back toward the apartment and Russell came out with a gun in his hand. It looked like Russell was running toward him. Mr. Herring thought Russell was going to shoot him so he ducked down at the back of his car and covered his head. Russell got in his car and drove off. Mr. Herring also drove off, without a destination.

Part 4: Style

Achieving Eloquence

The first step in improving sentence style

Combining Sentences:

- A) His early experiences included seeing his cousin being shot, being beaten by his father, and his mother dying from alcoholism. His early experiences led him to develop Post Traumatic Stress Disorder
- B) He developed Post Traumatic Stress Disorder after several early childhood experiences: seeing his cousin being shot, being beaten by his father, and watching his mother die from alcoholism.

Combine the following sentences:

- 1) Wanda retreated even further into an alcoholic haze after her husband's death. She regularly visited "liquor houses." At the liquor houses, cheap alcohol was served in plastic cups and violence was a regular occurrence.
- 2) William often clung to his mother after his father's death. He was afraid that she would get killed and leave him.
- 3) Mr. Herring was afraid to identify Russell as the shooter. He knew Russell had previously been to prison for armed robbery.

Parallelism:

- C) His early experiences with his cousin being shot, the beatings by his father, and when his mother died led him to develop Post Traumatic Stress Disorder.
- D) His early experiences—witnessing his cousin being shot, being beaten by his father, and losing his mother to alcoholism—led him to develop Post Traumatic Stress Disorder.

Rewrite the following sentences to improve parallelism.

- 4) The drug deal provided sufficient stressors to provoke a PTSD reaction in William that day. These stressors included that drug deals are dangerous, that the people involved will often be armed, that this deal involved a great deal of money and drugs, and that there was a language and cultural barrier that made communication unclear.

- 5) PTSD is an anxiety disorder in which a person responds to a traumatic event with intense fear or helplessness. The symptoms cluster in three groups: reexperience of the event, avoiding things that remind one of the trauma, and increased anxiety.

Emphasis:

Readers in English tend to focus on the first and last parts of each sentence. Consider the following two examples. What different does the arrangement of ideas in these sentences make?

- E) His early experiences—witnessing his cousin being shot, being beaten by his father, and losing his mother to alcoholism—led him to develop Post Traumatic Stress Disorder.
- F) He developed Post Traumatic Stress Disorder because of several early childhood experiences: witnessing his cousin being shot, being beaten by his father, and losing his mother to alcoholism.

Revise the following sentences to make better use of emphasis.

- 6) Mr. Herring had made notes about what happened in Moore's apartment and the notes, a newspaper article about the case, and a letter to his attorney were stolen along with a honeybun and some other canteen items.

- 7) The drug deal provided sufficient stressors to provoke a PTSD reaction in William that day.

Given-New Contract:

Readers in English also expect each subject in a sentence to follow from a previous sentence. This is termed the Given-New Contract:

Consider:

- G) A man appeared at the door. Joe Smith was his name.
 H) A man appeared at the door. His name was Joe Smith.

Once the noun “man” was introduced, the reader assumes that he has a name, so that information is not new. But the name “Joe Smith” is new information. The second pair of sentences seem more coherent because it begins with old information and moves on to new information.

- 8) Two fifty dollar bills and two five dollar bills were on the floor at the top of the stairs to the apartment. A 750.7-gram plastic bag of cocaine was also on the floor.
- 9) Blood was smeared through the living room and dining area to the kitchen. A bullet was under the window in the living room and a nine-millimeter pistol was beside the couch.

Self-editing Activities:

- Read your statement of facts out loud. When you hear yourself speak, you’ll be more likely to notice sentences that are wordy, unclear, or awkward.
- If you come across a sentence that seems awkward, or if you are having trouble writing a sentence or getting an idea down on paper, stop and say out loud “What I’m trying to say is....” Often we express ourselves more naturally and clearly orally than we do in writing.
- Print out your document and read it on paper. Most of us are better editors on paper than on screen.
- Go through your statement sentence by sentence. Focusing on **one element at a time**, consider how you might make better use of:
 - Sentence combination
 - Emphasis
 - Parallelism
 - Repetition
 - Given-new contract

Sample Passages for Editing

10) Police found Dexter Moore lying on the kitchen floor, barely breathing. Two fifty dollar bills and two five dollar bills were on the floor at the top of the stairs to the apartment. A 750.7-gram plastic bag of cocaine was also on the floor. Police put the cocaine and money on one of the half walls so rescue workers could gain access. There was a pool of blood under a window in the living room. Blood was smeared through the living room and dining area to the kitchen. A bullet was under the window in the living room and a nine-millimeter pistol was beside the couch. Additionally, 2.4 grams of cocaine was in a coat in the bedroom; a large plastic bag containing smaller bags of a total of 140.7 grams of cocaine base and 156 grams of powder cocaine was in a shaving kit in a kitchen cabinet; and a large sum of cash was in a shaving kit in the laundry room.

11) Around 11:40 PM the night of November 7, 2003, Nathan Mitchell Nichols, a patrolman for the town of Springfield, North Carolina, was standing in the middle of East Springfield Road wearing no reflective clothing, as two motorcycles approached out of the darkness from a rise in the roadway some 600-700 feet away. The cyclists saw vehicles on both side of the roadway with lights but did not see Officer Nichols in the middle of the roadway until almost upon him. The first cyclist was able to take evasive action at the last moment and avoided contact with Officer Nichols. A second cyclist, the defendant, Gary O'Malley Bradley, riding directly behind the first cyclist, was not so fortunate. His motorcycle struck Officer Nichols in spite of his last second attempt at breaking and evasion.

Sample Fact Pattern

STATE V. JOHN DOE

Your client, John Doe, was convicted of trafficking cocaine by possession and sale of cocaine; the cases were consolidated for one mandatory 175 month sentence. At sentencing, the judge said he was troubled by the mandatory sentence on the facts of the case, but that he was obligated to follow the law.

The Testimony of Lead Narcotics Detective Mike Young

Young has investigated narcotics for fifteen years. The intake officers at the jail gave the defendant the name Juan Doe (objection overruled). Young also testified that the arresting officers found no identification on him at the time of arrest (hearsay objection overruled). Mr. Young pointed out Mr. Doe in court and said that his appearance had not changed since arrest. Arrest reports described him as a Hispanic male apparently in his early twenties. He has a light complexion, is 5'6 and weighs 170 lbs. He has long black hair. At the time of his arrest, his hands were extremely work-hardened; he was wearing blue jeans and a black tee shirt. He would not look anyone in the eye (objection to relevance overruled), even when officers "emphasized the need to listen." Mr. Doe would say nothing in response to questions in English or Spanish except, "Say nothing," and "Machete." To try to determine where he might have come from, an FBI language expert was consulted -- the expert, who listened to tapes of the defendant's few words, placed the accent in a particular region in the Columbian highlands (objection to hearsay, relevance, 403). Young testified that a huge volume of

cocaine entering the U.S. originated in South America.

Mr. Doe was arrested in a house in Siler City in a poor neighborhood that has a high crime rate. Drug sales have been a problem in the area (objection overruled). A police canvas revealed that no one in the neighborhood knew or had previously seen Mr. Doe (objection overruled, motion to strike overruled, motion for mistrial overruled). Officer John Pitt was in charge of the team that made the arrest.

On cross, Detective Young testified that the FBI language expert told him that the region in Columbia associated with the accent was populated with a very dark-skinned indigenous people. (Out of the presence of the jury, motion to strike the testimony concerning Columbian highlands denied). He also testified that the defendant also said "Maria" several times in the presence of the arresting officers. This was Officer's Pitt's first time leading a controlled buy and drug search.

The Testimony of Officer John Pitt

Mr. Doe was arrested on May 25, 2006, at 6:00 p.m. inside a house at 27 River Street. The house was being renovated -- drywall work and painting were in progress. There were other people in the house at the time of arrest, but Mr. Doe was the only person on the second floor. He was sitting on the floor on a cardboard box containing eight ounces of cocaine powder. He had no paint or drywall dust on him.

Officer Pitt testified that he had received several complaints about drugs being sold from 27 River Street (objection to hearsay overruled). At about 11:30 A.M. on May 25, 2006, he sent a surveillance team to River Street, with five officers, all of whom were stationed at various locations across the street from 27 River St. At about noon, Officer Pitt gave a confidential informant \$40 in marked bills and told him to knock on the door

of the building and try to buy drugs.

Officer Pitt saw the informant knock on the door. A man appeared and had a conversation with the informant through the half-opened door; Pitt could not hear the conversation from his post across the street. After about 10 seconds, the man went back into the house. In his incident report, Officer Pitt described the man as Hispanic, about 5'8" tall, 150 pounds, medium build, long black hair, wearing blue jeans and a black sweatshirt.

About 30 seconds after the man went back in the house a woman emerged. She spoke to the informant for a few seconds, then went to a car parked on the street. She opened the car door, bent down, and retrieved a package wrapped in brown paper from the front seat area. She then went back to the front door where the informant was waiting and motioned for him to come inside.

After about five minutes, the informant returned to Officer Pitt, told him he had just bought drugs from the man and the woman, and gave him a very small vial of what appeared to be crack cocaine (objection overruled), which he said the woman had handed him. (motion to strike what the informant said denied, but judge instructs jury that the evidence is to be received and considered only to the extent that it explains what the officer did next). The informant was pale and appeared to be shaking slightly when he returned from the house. He told Officer Pitt that the woman had pulled a large handgun on him, held it to his head, and told him she would blow his brains out if he ever snitched on her.

Officer Pitt then returned to the police station and got a warrant. He left the members of his team behind to watch the house, but when a call came in that an officer had been knifed three blocks away, the entire team ran to that location. The call turned

out to be an apparent hoax, and after ten minutes, the team returned to the house. (Motion to strike all testimony concerning what the team did while Pitt obtained a warrant denied). The car was gone when they returned. (motion to strike denied).

At 6:30 p.m., Pitt and the team executed the search warrant. They knocked on the door. A man opened the door and they entered and searched the entire place. They found six men present on the first floor, all of whom were undocumented Mexican citizens who were known to have lived in Siler City for some time, had no criminal records, and worked in casual labor teams in the area as drywallers and painters. All six were interrogated but were then turned over to immigration authorities for deportation proceedings. According to Pitt, video surveillance cameras were being installed all over the first floor and reinforced steel and extra locks were being added to all the doors, although the six men on the first floor were not found with tools for working with video equipment or any other tools, except for drywall and painting equipment. They were building what appeared to be hidden compartments in the walls, but explained that they were just doing what the head guy, Machete, told them to do (hearsay objection overruled).

Mr. Doe was the only person on the second floor. Paint rollers, trays, and plastering tools were all around him, and the walls were obviously undergoing renovations. No marked money or drugs were found on Mr. Doe's person. The search turned up no black sweatshirt or other clothing. He made no attempt to run and did not really pay attention to the officers until they forced him to his feet.

Officer Pitt testified that he had recently attended an FBI seminar on major drug sales. He was qualified over objection as an expert witness on major drug sales. He testified that the construction he saw in the house is typical of the renovations done to

convert a normal house to a house used for major drug sale operations. Officer Pitt identified Mr. Doe as the man who spoke to the confidential informant through the door. The night of the arrest, Officer Pitt showed the informant a photo array that included Mr. Doe's picture. The informant picked out Mr. Doe as the person who spoke with him and took the marked money. (hearsay objection overruled)

On cross, Officer Pitt testified that he did not know if the informant was searched when he returned from the house. He also testified that he learned at the seminar he attended that major cocaine importers are not involved in production of crack cocaine.

Pre-trial Proceedings

A pre-trial motion to suppress the drugs on Fourth Amendment grounds was denied for lack of the defendant's standing. A motion to suppress both Officer Pitt's identification and the informant's photo ID on Fifth Amendment suggestiveness grounds was also denied. A motion to reveal the identity of the informant was denied after Detective Young testified that a subpoena for the informant at his usual residence was returned "unable to locate" and that the informant had not been seen by narcotics officers around town in the last two weeks (objection overruled). The judge denied the defense motion to reveal the identity of the informant's residence, the places he usually is found, or his name.

Sample Statement of Facts (Excerpt)

C. Anthony Herring's Evidence – Anthony Herring Brought Ronald Russell to Dexter Moore's Apartment So Russell Could "Hook Up" with Moore. Russell Unexpectedly Tried to Rob Moore of Cocaine With a Gun, and Ended Up Shooting Moore During the Robbery.

Anthony Herring testified that he did not make a plan with Ronald Russell to rob Dexter Moore of money or drugs and that Russell acted on his own. Mr. Herring originally introduced Russell to Moore at a racetrack in Rockingham in 2002, and Moore bought some DVDs from Russell. After that, in late 2002 or early 2003, Russell called Mr. Herring and asked directions to Northgate Mall where Russell was supposed to meet Moore. Herring thought Russell went with Moore back to his apartment in Durham. (Tpp. 256-57, 388, 405, 408)

On August 18, 2003, Mr. Herring called Russell because Russell's mother said he wanted to speak to him. Russell asked Mr. Herring to be introduced to Moore again because he needed to "hook up" with him. Mr. Herring told Russell that he owed Moore money for some motorcycle parts and they could go see Moore together. Mr. Herring met up with his cousin at a truck stop on route 95 near Dunn. Russell was coming from Fayetteville. They left in separate cars, going toward Raleigh. (Tpp. 358-61)

Mr. Herring arrived at Moore's apartment at 4:30 or 5:00 p.m. He parked "right out in front," "in the first parking lot." He went up to Moore's apartment and Moore let him in. Herring gave Moore the money he owed him and Moore put it on the kitchen counter. Moore's gun was on top of the television. Herring and Moore watched television for fifteen minutes. (Tpp. 423-30)

Russell had gotten lost and called for directions. He arrived and parked on the other side of the L-shaped parking lot. Herring went down to meet Russell and brought

him upstairs. Russell asked Moore if he could get something for three-fifty and Moore said he had to have five hundred. Moore showed Russell a bag of crack cocaine and a bag of powder cocaine. Mr. Herring stayed on the sofa watching television the whole time. (Tpp. 363-65)

Russell said, "Let me go to my car and get \$100." Russell went outside. Mr. Herring chatted with Moore about the news. Herring then heard Russell say "5-0" or "Police, get down" from the stairwell to the apartment. Herring and Moore were both confused and stood up. Russell got to the top of the stairs and was waving a gun saying "get down." Herring and Moore both ducked down in the kitchen. Russell "ran in behind" Moore, "caught him," and started tussling with him in the living room. Russell was trying to get a bag of drugs out of Moore's hand. (Tpp. 366-69)

Mr. Herring could not see what was happening because of the half wall dividing the kitchen and living room. There was a bag of cocaine on the counter top. Mr. Herring grabbed the bag of cocaine and hid it under a bag of clothes so Russell wouldn't get it. Mr. Herring thought there were three bags of cocaine all together – the one on the counter that he hid under the clothes (the "uncooked" bag), the bag of "cooked" or crack cocaine, and another bag that he did not see. (Tpp. 370-71, 441-43)

Mr. Herring started running down the stairs and heard a shot. He ran to his car, fumbling with his keys. He also had his cell phone in his hand. He did not have anything under his arm. He looked back toward the apartment and Russell came out with a gun in his hand. It looked like Russell was running toward him. Mr. Herring thought Russell was going to shoot him so he ducked down at the back of his car and covered his head. Russell got in his car and drove off. Mr. Herring also drove off, without a destination. (Tpp. 372-73, 376, 443-44)

As he was driving, Mr. Herring tried to call Moore to see if he was okay and to tell him where he hid the cocaine. No one answered. Herring did not know if Moore had

been shot or not. He called Robin Morgan to see if he should call 911. He next called Ernest Artis and also asked if should call 911. Artis said to call Trollinger and see what she wanted to do. Mr. Herring called Morgan back and asked her to meet him at the Triangle Towne Mall. He and Morgan were at the mall for two to three hours trying to find out if Moore had been shot. Trollinger called Morgan and told her about Moore's phone call, but Trollinger was not sure if Moore was "just playing." (Tpp. 373-77, 445-55)

When Morgan was later interviewed by police, Detective Perry spoke to Mr. Herring on Morgan's cell phone. Mr. Herring had gone back to Dunn and parked his car at a truck stop so Russell wouldn't know he was at home. Perry asked Mr. Herring if he had been in Moore's apartment when this happened and Mr. Herring said yes. Perry asked if he was willing to come to the station and Mr. Herring said "sure." Herring said he would leave immediately and meet him there. Herring was still "shook and panicked," so Artis drove him to Raleigh. (Tpp. 378-79)

At the station, Mr. Herring spoke to Detectives Perry and Montague and told them everything that happened except who did it. Before he arrived at the police station, he had spoken to his cousin over the phone. Herring said, "Man, what the h, what were you thinking about? Why would you do something like that? You shot my man." Russell replied, "I did? I didn't shoot him and you don't even know what happened. You had better keep your mouth shut." Mr. Herring was afraid to identify Russell as the shooter. He knew Russell had previously been to prison for armed robbery. He was also convinced that Russell had wanted to shoot him as they left the apartment. (Tpp. 380-82)

Police took Mr. Herring back to Dunn and dropped him off at a motel. Mr. Herring did not want to go home because he was afraid of Russell. Herring was still afraid to drive his car home the next day, so he got his brother to pick him up and drop

him in the neighborhood where he lived. Perry called and asked if could meet him at his house. Mr. Herring didn't want Perry to go there in case Russell was watching, so he asked Perry to meet him at the truck stop. (Tpp. 383-84, 458-60)

Mr. Herring spoke to police five or six times the next day over the phone. The police wanted to know about Dexter Moore's drug business. Mr. Herring called a lawyer that day to get advice on what to do. He wanted to tell police that Russell was the shooter but he was still afraid. He had an appointment to see the lawyer the next day at 1:30. That night, he stayed with a friend in Goldsboro. (Tpp. 385, 387, 461)

On August 20, the police asked Mr. Herring to come to the station again. Mr. Herring did so, Perry asked him a few questions, and Mr. Herring said he was going to contact a lawyer and would make a statement through him. Perry arrested Mr. Herring. (Tpp. 386-87)

Mr. Herring recalled being in the county jail during October 2003. He remembered seeing Darren Wright there, but did not know who he was. He only knew him as "New York," a friend of a guy named Leon. Wright was only there about eight days. Mr. Herring never had a conversation with Wright, but was in his presence several times because the prisoners could mingle in an open area during the day. He never told Wright anything about a robbery or anything about his case at all. Mr. Herring had made notes about what happened in Moore's apartment and the notes, a newspaper article about the case, and a letter to his attorney were stolen along with a honeybun and some other canteen items. He didn't know who took the items, but Leon told him to look out for New York. Russell was arrested around the time Herring and Wright were at the jail together, so Russell's picture would have been on the news along with details of the case. (Tpp. 486-94)