

<input checked="" type="checkbox"/> JURY TRIAL <input type="checkbox"/> BENCH TRIAL	TRIAL # 135	CASE #:	2004-CR-00921
PLAINTIFF: State of Florida		DEFENDANT:	Snively Whiplash
COUNSEL: Elliott Wilcox		COUNSEL:	Dominic D'Efendsem
JUDGE: Jerry Judicious		TRIAL DATES:	December 1-3, 2004
VERDICT:	Guilty as charged on all counts. Sentenced to 30 years imprisonment		

*Charges/Complaint:*

Carjacking with a Firearm, Robbery with a Firearm,  
and Kidnapping with Intent to Commit a Felony

*Trial theme:*

Ultimately, it became "Liar Liar, Pants on Fire"

*Summary of case:*

Daniel Victim, a Dominos pizza delivery driver, has just finished delivering a pizza. Two men flag him down and ask for directions. As he stops to help, the defendant pulls a semi-automatic firearm and points it in Daniel's ribs. He demands money, but only receives \$20.00. He orders Daniel out of the car and tells the co-defendant to place him in the trunk of a second car. Daniel stays in the trunk of the car for about 8 minutes until he starts to smell the carbon monoxide. Fearing he'll die if he stays in the car, he pulls the trunk release and runs to a gas station. The defendant says "it wasn't me, I was in Tampa for the Ying Tang Twins concert that night." On rebuttal, I prove he lied - the concert was actually one week and one day later.

*Lessons Learned, Highlights, and Things I Would Do Differently If I Could Try it Again*

*Jury Selection:*

I got the jury to talk a little bit more than in my previous trials. I was more conversational and felt more comfortable than usual. Still striving for that perfect jury selection - the one where I talk 10% of the time and listen 90% of the time. This time was closer to 50% talking / 50% listening.

Next time, I should try to have the jurors react to each other some more: "Mr. Jones, what do you think about what Mrs. Smith said?" "Ms. Telmo, how would you respond to Mr. Fijon's statement?"

*Opening statement:*

In this courtroom, I was tied to the lectern, so I couldn't move around to show the action. I needed to tell the story with my words and with my voice. Described the action as clearly as I could and painted a picture in the jury's mind.

*Direct examination(s):*

The victim was one of the best witnesses I've ever had. Calm, polite, and well-dressed, he told the story of being robbed at gun point. We saved the identification of the defendant for last, doing a mini-closing argument with my final question. The other part that stood out was when we recreated the length of time the defendant pointed the gun in Daniel's ribs. I asked the victim to remain quiet for the entire length of time he was held at gunpoint. 15 seconds doesn't sound like a long period of time until you, the witness, the judge, the jury, and everyone else in the room are forced to sit silently for that length of time.

On cross, the defense tried to raise an issue as to how the defendant held the gun. For re-direct, I used the visualization technique again – I had him step out of the chair and stand as if he were the robber. I sat in a chair and acted as if I were him in the driver's seat. He pointed his finger in my ribs and the jury saw **exactly** what happened to him.

*Cross examination(s):*

The first cross-examination of the defendant didn't go very well. He sprung this alibi defense ("I was at the Ying Yang Twins concert in Tampa") on me and since I didn't have internet access, I had to scramble to destroy his alibi. I crossed blindly for a while ("you have the greatest interest in the outcome of the case; you ran from the police because you'd do anything to avoid getting caught") but didn't get very far.

The cross-examination after my rebuttal case was **very** effective – I tore into him about how he'd built up his alibi story on Monday, doing everything he could to convince us he was in Tampa for this concert, but once I annihilated his alibi, he needed to come up with a different story. It was pure sport – I had a blast jousting with him.

*Closing argument:*

I wanted to ask if they smelled any smoke in the courtroom (...from the defendant's pants, you know, "liar liar, pants on...") The technique I used to tell the story began like this: "When you went home on Monday, your friends and family asked, 'Did you get picked? What type of case is it?' But for two days, you've followed the judge's orders and haven't discussed the case with anyone. Tonight, when you go home, you'll tell them..." and then I told the entire story through **their** point of view, as if they were telling the story to their friend or spouse – "I heard that the defendant pointed a gun at the victim..." "...and then the defendant got caught in a lie! The concert date was actually 8 days later!" Then, I conclude with, "After they hear all that, they won't ask what your verdict was – they'll ask you what type of sentence the judge gave him."

*The most important lessons I learned:*

**Be prepared.** I don't know what else I could have done to get the information about his lie of an alibi – I couldn't depose the defendant before trial. We scrambled like mad back at the office to impeach his alibi – if I'd had Internet access at the desk, I could have impeached him right then and there, but since that doesn't seem like it will change, I need to find another way to impeach these last minute stories.

**Savor the moment.** The "Perry Mason" moment of exposing his lie might be a once in a lifetime moment. Cross-examining him the second time was a great example of cross-examination as sport.

*Targeted area for improvement in my next trial:*

**Preparation for cross-examination.** Prepare a sketch outline of cross-examination questions for the defendant. Even though it's always a blind cross-examination, I should be able to do some level of preparation in advance.