

## **The State of New York v. Marcus Heilbroner**

A Fact Pattern based on the book - *When You Reach Me*

**(A Fact Packet takes a storyline in a novel and highlights the way it leads to a Literature-Based Mock Trial. To make sure there are two sides to the trial, the Fact Packet highlights the storyline from two different points of view. In many cases, the Fact Packet adds a character or an event to the story so that the “verdict” is not black and white from the start of the trial. We like to think that the students are being asked to think in the “gray” and support their way of thinking through the side they take and the questions they ask their witnesses and the witnesses from the opposing side.)**

It is October 15, 20\_\_\_. Two best friends, 12-year-olds Miranda and Sal, are taking their routine walk home from their New York City public school. The two young people know they must be very careful of their surroundings on their daily walk home. They know, for example, that there is always a gang of boys hanging out on the block between Broadway and Amsterdam. They also know that the "crazy" man, who they refer to as the “Laughing Man”, is always on the corner near their apartments. The friends’ walk takes them one block down West End Avenue to Broadway, then one block from Broadway to Amsterdam and passed the person they call the Laughing Man, and finally half a block to their front door.

Miranda and Sal did not know, however, that on this October day, Sal would be punched in the stomach and smacked across the face by a stranger—for no apparent reason at all.

After Sal is punched, he stops talking to his best friend, Miranda. Miranda soon discovers that the stranger who punched Sal is a student in their school named Marcus Heilbroner. One day, Miranda volunteers to be the office monitor, the student who helps the school secretary. As office monitor, Miranda brings students to the dentist, Dr. Paul Alvarez, who provides free service to students who cannot afford the services of a regular dentist. Marcus is one of those students. Miranda meets Marcus and learns that he is a bright sixth grader who has an unusual obsession with the third dimension and time travel—an obsession shared by Miranda.

The situation gets very complicated. Miranda, although puzzled by Sal's decision not to speak to her, never tells Sal what she knows, and never asks him why he is no longer talking to her. Marcus learns that he hurt a boy named Sal, but he chooses not to take any responsibility for his actions.

Marcus Heilbroner is charged with **involuntary manslaughter** for the death of the Laughing Man who was always on the corner of Broadway and Amsterdam, a half block from Sal's and Miranda's apartments. **A person is guilty of involuntary manslaughter when, as a direct result of the doing of performing an act in a reckless or negligent manner, he/she causes the death of another person.** Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when (1) he or she acts in a reckless way that creates a **high risk of death or great bodily injury** AND (2) a reasonable person would have known that acting in that way would create such a risk.

Here are the details starting with Miranda's story and ending with what Belle saw:

1. Miranda sees Sal walking ahead of her on her way home from school and assumes that his class was dismissed a few minutes before hers.
2. Miranda does not try to catch up with Sal because she knows he is not talking to her.
3. Miranda sees the boys that hang on the block between Broadway and Amsterdam throw potato chips at Sal and reach out and push him.
4. Sal is upset by this and yells at the boys.
5. At the same time, Marcus comes out and calls to Sal to wait for him.
6. Sal remembers Marcus as the bully who punched him and smacked him across the face.
7. Sal runs away from Marcus and continues to run faster and faster.
8. As Sal approaches the street, Marcus and Miranda see a big truck coming down the street and they both try to warn him.
9. Sal does not see the truck until it is nearly on top of him.
10. Suddenly, the Laughing Man leaps into the street, kicks Sal out of the way, and ends up being hit by the truck himself.

11. Sal is seriously hurt. The Laughing Man is killed.
12. Belle Martinez sees the final scene and calls the police.
13. Two policemen come to the school and ask for Marcus Heilbroner, describing him as a kid who "likes to chase kids into the street".
14. Marcus had returned to school and was in Dr. Alvarez's Office when the police came to try to take him away.

The question: **Did Marcus Heilbroner's criminally negligent actions cause the death of the Laughing Man? If yes, then he is guilty of involuntary manslaughter.**

**Your challenge:** Write the Mock Trial of *New York State v Marcus Heilbroner*, a trial in which Marcus is being charged with Involuntary Manslaughter.

**Your job will be to either prove that the Laughing Man was killed because of actions by Marcus Heilbroner, or that the incident was a tragic accident and Marcus Heilbroner is not guilty.**

### Legal Professionals in the Script

**Bailiff:** The bailiff is a legal officer who maintains order in the courtroom and handles various tasks for the judge, such as swearing in the witnesses.

**Judge:** The judge is a government official who presides over court proceedings. The judge has the ultimate authority to make decisions about objections and provides instruction to the jury about the law.

**Prosecuting Attorney:** The prosecutor brings legal proceedings against an individual and represents the entire state, NOT the victim.

**Key Concept - The prosecutor represents the entire state, NOT the victim:** The job of a prosecutor is to obtain justice for all citizens, not merely to punish the defendant. Note that the name of the case is *The State of New York v. Marcus Heilbroner*, not *The Laughing Man v. Marcus Heilbroner*. That's because a crime is considered to be an offense against everyone in society and the prosecutor's client is the entire state.

**Key concept - Burden of Proof:** The burden of proof refers to the degree to which

the jury must be persuaded of the defendant's guilt in order to convict. Because criminal cases are the most serious cases in our legal system, the burden of proof is high. In other words, the jury must be convinced by beyond a reasonable doubt that the defendant committed the crime in order to find the defendant guilty. It's not enough for the jury to conclude that the defendant probably committed the crime or most likely committed the crime - the jury must be strongly convinced that the defendant is guilty. In all criminal cases, the burden of proof is on the prosecution. Defendants are presumed innocent until proven guilty by the prosecution beyond a reasonable doubt. Therefore, the burden is on the prosecution to persuade the jury of the defendant's guilt – the burden is NOT on the defendant to prove his innocence.

**Key Concept - Role of the Prosecutor:** Once the prosecutor has determined that there is sufficient evidence to bring a case, the prosecutor must prove the defendant's guilt beyond a reasonable doubt. It's important to note that the defendant actually doesn't HAVE TO do anything because it's the prosecutor's job to prove the guilt of the defendant. Of course, the vast majority of defendants, through their attorneys, cross-examine witnesses and present evidence, but the responsibility of proving the guilt of the defendant is **solely** that of the prosecutor.

In a courtroom, the party with the burden of proof is always closest to the jury so in a criminal case the prosecutor will always sit at the table closer to the jurors.

**Defense Attorney:** The defense attorney represents only the defendant, or the person accused of the crime.

**Key Concept - The defense attorney represents only the defendant:** The job of the defense attorney is to hold the prosecutor to the obligation to prove the case beyond a reasonable doubt. The defense attorney will try to poke holes in the prosecutor's case and will argue that the prosecutor has not proven that the defendant is guilty. Notice that it NEVER the defense attorney's job to prove that the defendant is innocent. The burden is on the prosecutor.

**Witnesses:** Witnesses provide the evidence in the case that the jury uses to decide whether the defendant is guilty or not guilty.

**Key Concept - The job of witnesses is to provide evidence:** What a witness saw and did is a type of evidence and it is admitted in court through testimony. Witnesses cannot ordinarily give opinions when testifying. [Only expert witnesses can give

opinion testimony.] Lay witnesses (or all witnesses who do not testify as an expert) must have personal knowledge of what they are testifying about – whatever they say cannot be something they heard another person say (that’s hearsay).

**Jury:** The job of the jury is to weigh all of the evidence presented and decide whether the prosecution met its burden of proof, and therefore decide whether the defendant is guilty or not guilty.

**The verdict in a criminal case is guilty or not guilty:**

**Key Concept - A jury** does not declare that the defendant is innocent, but only that the prosecution has not met its burden of proof beyond a reasonable doubt and therefore the defendant is not guilty. To convict, the jury in a criminal case must be unanimously convinced that the defendant is guilty as accused.

**Objections:** Objections should be raised when an attorney feels the opposing attorney is violating the Rules of Evidence (which govern what kind of evidence is admissible or not) and the objecting attorney does not wish to have the answer or information at issue placed in the record or heard by the jury. If an objection is sustained, the jury is not to consider the preceding statement whatsoever.

*The State of New York v. Marcus Heilbronner*

Court Clerk: All rise. The Court of Room \_\_\_\_\_ is now in session. The Honorable Judge \_\_\_\_\_ presiding.

Judge: You may be seated. Today we are going to hear the case of the State of New York versus Marcus Heilbronner. The Defendant is charged with involuntary manslaughter.

Prosecution, are you ready?

Prosecution: (standing) We are, Your Honor.

Judge: Is the Defense ready?

Defense: (standing) We are, Your Honor.

Judge: Prosecution, you may proceed with your Opening Statement.

Prosecution: May it please the Court. Your Honor and Ladies and Gentlemen of the Jury, we are here today to prove, beyond a reasonable doubt, that the negligent actions of Marcus Heilbronner

caused both the death of a neighborhood homeless man and also caused injury to young Sal Decker. We will hear from Belle Martinez, the owner of Belle's Market on Amsterdam Avenue, as she describes the moment, she saw Marcus Heilbroner chasing Sal Decker down Amsterdam Avenue. She will describe for the jury how she watched Sal Decker run so fast that he was completely unaware of the speeding truck headed directly towards him. Then we will hear from Sal Decker. Sal will not only share how afraid he was of Marcus Heilbroner, but also **why** he was so afraid of the Defendant. Finally, we will hear from Miranda White, the only person who witnessed first-hand how Marcus Heilbroner first abused Sal Decker. Miranda White was also running behind Marcus Heilbroner the moment the homeless man died and Sal Decker was seriously injured. As an eye witness, Miranda White will describe both incidents in detail. Marcus Heilbroner bullied Sal Decker. After their first encounter, Marcus Heilbroner never took responsibility for his injuring Sal. Therefore, Sal Decker had no reason to believe that Marcus Heilbroner was running after him with anything but evil intentions. These circumstances resulted in one man dying and another, young Sal, being injured. Marcus Heilbroner must pay a consequence for his reckless behavior. Thank you, Your Honor

Judge: Defense, you may give your Opening Statement

Defense: May it please the Court. Your Honor and Ladies and Gentlemen of the Jury, we are here today to tell the true story of Marcus Heilbroner - a bright, interesting young man who felt he had to hit someone to prove his loyalty to his brother. We are going to hear from Sarah White, Miranda White's mom, who knows Marcus Heilbroner's side of the story because she was with him when he was first arrested by the police. Mrs. White stayed with Marcus so that the police would not question him without an adult present. We will also hear from Dr. Alvarez, the dentist who works in public schools and treats students who cannot afford to go to a regular dentist's office. Dr. Alvarez will tell the Jury about the Marcus Heilbroner he has known for several years. He will describe Marcus Heilbroner as a good kid and a smart student. Finally, we will hear from Marcus Heilbroner himself. We will learn about Marcus's love of science and math and his unique interest in time travel and the third dimension. We will learn about his intentions on the day that the homeless man was killed and Sal Decker was injured. After hearing from these witnesses, the jury will know that Marcus Heilbroner is not the kid who "likes to chase other kids into the street". He is an honest young man who wasn't trying to hurt anyone. We will learn that what happened that fateful day was just an unfortunate accident.

Thank you, Your Honor.

Judge: Prosecution, please call your first witness.

Prosecution: The Prosecution calls Belle Martinez to the stand.

Bailiff: Ms. Martinez, please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Belle Martinez: I do. Bailiff: You may be seated.

Prosecution: Please state your name and what you do for a living.

Belle Martinez: I am Belle Martinez and I own Belle's Market on Amsterdam Avenue.

Prosecution: Do students from John Adams Elementary School walk by your store every day?

Belle Martinez: Yes...many students walk by Belle's Market every day.

Prosecution: Do the students come into the store?

Belle Martinez: Yes. There are students in my store regularly.

Prosecution: Do you know the student Miranda White?

Belle Martinez: Yes, I know Miranda quite well. She comes into my store often.

Prosecution: Do you know Sal Decker?

Belle Martinez: Yes, Sal also comes into Belle's Market regularly. Sal and Miranda White used to come in together.

Prosecution: Do you know Marcus Heilbroner?

Belle Martinez: Yes.

Prosecution: What do you know about Marcus Heilbroner?

Belle Martinez: I do not know too much about Marcus Heilbroner. I know he passes by Belle's Market and I know he lives in the neighborhood.

Prosecution: Was your store open on the day in question?

Belle Martinez: Yes, my store is open every day.

Prosecution: Can you please tell the Jury what you saw the day of the incident?

Belle Martinez: I saw Sal Decker running down the street.

Prosecution: Can you tell us why he was running down the street?

Belle Martinez: Yes. He was being chased by someone.

Prosecution: Can you tell us by whom he was being chased?

Belle Martinez: He was being chased by the Defendant, Marcus Heilbroner.

Prosecution: Do you know why Marcus Heilbroner was chasing Sal Decker?

Belle Martinez: I do not know why he was chasing Sal. However, I do know that Sal was running very fast – as if he was afraid.

Prosecution: Please describe what happened next.

Belle Martinez: Yes. Sal was not looking where he was running. He just kept running and running as fast as he could. Suddenly, a big truck came towards him. Then, out of nowhere, the homeless man that we called the Laughing Man jumped out, pushed Sal to safety, and was hit by the truck. It was awful!

Prosecution: Who is this homeless man you called the Laughing Man?

Belle Martinez: The Laughing Man was homeless. He was always in the street practicing kicks, sleeping under the mailbox, and yelling weird things.

Prosecution: You stated that the Laughing Man was killed by the truck. Can you tell us what you did after you saw the incident?

Belle Martinez: I called the police and then I went out to comfort Miranda. Miranda looked like she was hurting; she was crying a lot. Because of Marcus Heilbroner, the Laughing Man was dead and Sal was hurt when the Laughing Man pushed him out of the way of the oncoming truck. Poor Miranda saw it all!

Prosecution: We have no further questions for this witness.

Judge: Defense may cross-examine the witness.

Defense: You were working the day of the incident, correct?

Belle Martinez: Yes.

Defense: Since you were busy working, could you state without reservation that you saw everything correctly?

Belle Martinez: (Pause) Why, I did see the whole incident.

Defense: And you are **sure** you saw all the details of what was happening?

Belle Martinez: I am.

Defense: Belle's Market had customers in it the time and day of the incident, correct?

Belle Martinez: My market always has customers.

Defense: You must have been helping some of the other customers during the time of the incident, right?

Belle Martinez: Well...yes.

Defense: Isn't it possible then that you did not see **everything** that was happening the day of the incident?

Belle Martinez: It is possible, but not likely.

Defense: We have no further questions for this witness.

Judge: The witness may step down. Prosecution may call their next witness.

Prosecution: We call Sal Decker to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Sal Decker: I do.

Bailiff: You may be seated.

Prosecution: Please state your name and what you do.

Sal Decker: My name is Sal Decker and I am a sixth-grade student at John Adams Elementary School.

Prosecution: Can you describe the first time you encountered Marcus Heilbroner?

Sal Decker: The first time I saw Marcus Heilbroner I was walking home from school and a boy who was much bigger than I am punched me for no reason at all. That boy was Marcus Heilbroner.

Prosecution: Did you ever see Marcus Heilbroner again after that first incident?

Sal Decker: I saw him the day that the Laughing Man died. Again, I was just walking home and he came out of nowhere and started to run after me. Since my first experience was such a frightening one, I turned and started running as fast as I could. I was very afraid of this boy who was bigger than I am and who hit me very hard the first time we met, for no reason at all.

Prosecution: Can you describe what happened after you realized it was Marcus Heilbroner who was running after you?

Sal Decker: I felt like I had to run because I thought Marcus Heilbroner was going to try to beat me up again. I just started running out of fear!

Prosecution: Can you tell us why you ran in the street and were almost hit by a truck?

Sal Decker: All I could think about was running away from Marcus Heilbroner. If the Laughing Man had not pushed me out of the way, I would have been hit by the truck head on instead of just being badly bruised because the Laughing Man pushed me out of the way.

Prosecution: We have no further questions for this witness.

Judge: The Defense may cross-examine the witness.

Defense: On the day of the incident, you were running away from Marcus Heilbroner, correct?

Sal: Yes.

Defense: Did you even know why Marcus was chasing you when you ran away from him?

Sal: Not really!

Defense: We heard that Marcus attacked you once. Did you ever tell anyone what had happened?

Sal: No...I told no one

Defense: Are you sure that Marcus was chasing you to hit you?

Sal: Well...no.

Defense: You could have handled this situation differently, right?

Sal: Why...I guess so.

Defense: Couldn't we say then that **you** are the reason that the Laughing Man died?

Prosecution: We object, Your Honor. Defense is badgering the witness.

Judge: Objection is sustained. Please restate the question.

Defense: Isn't it true that you should take some of the responsibility for the death of the Laughing Man?

Sal: No!!!!

Defense: You did not see the truck coming, correct?

Sal: Yes.

Defense: The Laughing Man saw what was happening and pushed you out of the way of the oncoming truck, correct?

Sal: Well...yes.

Defense: Then, do you see how you should take some of the responsibility for the death of the Laughing Man?

Sal: Absolutely not!!!!

Defense: We have no further questions for this witness.

Judge: The witness may step down. Prosecution may call its next witness.

Prosecution: We call Miranda White to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth.

Miranda White: I do. Bailiff: You may be seated.

Prosecution: Please state your name and what you do.

Miranda: My name is Miranda White and I am a student in the sixth grade at John Adams Elementary School.

Prosecution: What is your relationship to Sal Decker?

Miranda: Sal and I are neighbors. We used to be best friends until ...until Marcus Heilbroner attacked Sal one day when Sal and I were walking home from school together.

Prosecution: What is the relationship between you and Marcus Heilbroner?

Miranda: I was a school messenger one day, and my job was to retrieve students who had appointments to see the in-school dentist. I was sent to get a student who turned out to be Marcus Heilbroner. I got to know Marcus a little after that.

Prosecution: Did Marcus ever talk about Sal?

Defense: Objection, hearsay. This is an out-of-court statement being offered for the truth of the matter asserted.

Judge: Prosecution, do you have a response?

Prosecution: This is not hearsay since it is a statement by the party opponent, Marcus.

Judge: Objection is overruled, you may answer the question.

Miranda: I did ask Marcus why he attacked Sal for no reason at all. He told me that his brother was bullied by the gang of boys who hang out on Amsterdam and that he failed to stand up for his brother. Marcus's brother was hurt and angry and told Marcus he should have helped him fight back. Marcus felt he had to hit someone to show his brother he could fight back. Marcus hit Sal. He wanted to see if Sal would hit him back. But...Sal never did hit Marcus back.

Prosecution: Can you describe what happened the second time Marcus and Sal saw each other?

Miranda: When Marcus saw Sal the day of the incident, he started to run after him. Marcus said he wanted to apologize. But...when Sal saw Marcus, he took off. Sal ran faster because he was so afraid of Marcus. That was understandable because Marcus beat him up the first time the two saw each other. Marcus started running. Sal ran ahead of him. Sal ran at an increasing speed; he was not paying attention to anything but getting away from Marcus. A truck was coming and, out of nowhere, the Laughing Man jumped out to push Sal out of the way of the oncoming truck!

Prosecution: Then what happened?

Miranda: It was awful. When the Laughing Man pushed Sal out of the way, Sal got hurt and Laughing Man was hit by the truck and killed.

Prosecution: Do you think Sal would have been injured and the homeless man killed if Marcus Heilbroner was not chasing Sal down the street?

Miranda White: I...well, I guess not.

Prosecution: We have no further questions for this witness, Your Honor. The Prosecution rests.

Judge: Defense may cross-examine the witness.

Defense: Did you ever take the time to tell Sal what you had learned about Marcus Heilbroner?

Miranda: No.

Defense: Did you try to help Sal on the day of the incident?

Miranda: No.

Defense: Did you try to stop Sal from running away?

Miranda: I called out to Sal, but he could not hear me.

Defense: You never called out to stop Sal when you saw that the truck was coming?

Miranda: I did, I called out as loud as I could, but Sal did not hear me!

Defense: We have no further questions for this witness.

Judge: The witness may step down. The Defense may call their first witness.

Defense: We call Sarah White to the stand.

Bailiff: Mrs. White, please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Sarah White: I do.

Bailiff: You may be seated.

Defense: What is your name?

Sarah White: My name is Sarah White.

Defense: What do you do?

Sarah White: I work as a secretary in a law office.

Defense: What is your relationship with Marcus Heilbroner?

Sarah White: I know him through my daughter Miranda.

Defense: What do you know about Marcus Heilbroner?

Sarah White: I know Marcus has become a friend of Miranda's. I also know that he was trying to apologize to Sal, and only started running after Sal to catch up to him to do just that.

Defense: What can you tell us about the day Sal was injured and the homeless man was killed?

Sarah White: My daughter Miranda called me at the law office where I work because two policemen had come to her school looking for Marcus. Miranda wanted me to come and help Marcus out. She did not know a lawyer to call and she knows I know about the law. Miranda is a very caring young lady. She might think Marcus is guilty, but she did realize that he needed someone there with him when the police came to arrest him. When I got to the school, I went directly to the dentist's office where the policemen were waiting. The officers told me why they were there. I told them they could not speak to Marcus until one of his parents was present.

They agreed. We talked. And then I heard from Marcus about what happened.

Defense: Can you tell us what you learned from Marcus on the day of the incident?

Sarah White: Marcus told me the whole story about how he attacked Sal earlier in the year. He told me how he and Miranda had gotten to know each other. Then, Marcus described how he saw Sal and decided it was time to apologize for what he had done. I know he meant well. It was all an accident. Sal thought Marcus was running to attack him again. Sal could not hear what Marcus was saying because he was running so fast and not paying attention. This whole tragedy was a terrible accident.

Defense: We have no further questions for this witness.

Judge: Prosecution may cross-examine the witness.

Prosecution: The day of the incident was the first time you met Marcus Heilbroner, correct?

Sarah White: Yes.

Prosecution: Did you talk with Marcus after the incident?

Sarah White: Yes.

Prosecution: Even though it took Marcus a very long time to make things right with Sal, do you believe his story that he wanted to apologize to Sal?

Sarah White: Yes.

Prosecution: If Marcus had never attacked Sal in the first place, would the Laughing Man still be alive?

Defense: We object, Your Honor. Prosecution is asking to predict something. We need to stick to the facts of what happened.

Judge: Objection sustained. Prosecution, ask your next question.

Prosecution: You tried to help Marcus. You said you knew the law. Isn't it true that you are not a lawyer?

Sarah White: Yes...I am not a lawyer.

Prosecution: Marcus Heilbroner is being accused of involuntary manslaughter, correct?

Sarah White: That is correct.

Prosecution: Marcus Heilbroner's behavior when he first met Sal Decker would be described as reckless, right?

Defense: Objection, Prosecution is asking the witness to provide a legal conclusion.

Judge: Sustained, ask your next question.

Prosecution: When Marcus saw Sal that second time, he never apologized for what happened earlier when he hit Sal for no reason at all, is that correct?

Sarah White: Why...yes.

Prosecution: According to the law, involuntary manslaughter is defined as a crime in which an individual's reckless and negligent behavior leads to the death of a victim, right?

Sarah White: Yes.

Prosecution: Wouldn't you say that Marcus's behavior the first time he saw Sal Decker was reckless?

Sarah White: I guess so.

Prosecution: And wouldn't you say that the fact that Marcus had not apologized to Sal earlier was negligent behavior?

Sarah White: Marcus is a kid. It is hard for kids to apologize.

Prosecution: Yes, but it was also negligent of Marcus not to apologize sooner, correct? Sarah White: (Pause) Yes.

Prosecution: A practicing attorney, which you are not, would surely describe what Marcus Heilbroner did as reckless and negligent behavior that led to the death of the victim, right?

Sarah White: (Pause) It was a tragic accident!

Prosecution: We have no further questions for this witness.

Judge: The witness may step down. You may call your next witness.

Defense: We call Dr. Alvarez to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Dr. Alvarez: I do.

Bailiff: You may be seated.

Defense: Please state your name and what you do.

Dr. Alvarez: I am Dr. Paul Alvarez. I am the dentist who comes to the schools to see children whose parents cannot afford to take their children to the dentist.

Defense: Please describe your relationship with Marcus Heilbroner.

Dr. Alvarez: I have known Marcus for several years. I have always found Marcus to be a smart, good kid who loves science and math. Every time Marcus comes to get work done on his teeth, he brings a book.

Defense: Can you describe what happened when the police came to look for Marcus?

Dr. Alvarez: Marcus stayed in my office. The police tried to take Marcus away and he did not have any adult to support him. I did not want that to happen.

Defense: What did you learn about the incident in which Sal Decker was injured and the Laughing

Man was killed?

Dr. Alvarez: I learned what Marcus was trying to do. I was worried that no one would understand. Marcus never meant to hurt anyone by chasing them into a street where a truck was coming at full speed. **It was a tragic accident!**

Defense: We have no further questions.

Judge: Prosecution may question this witness.

Prosecution: Isn't it true that you were not an eye witness to the incident?

Dr. Alvarez: Yes.

Prosecution: You do not know any of the details of the incident, correct?

Dr. Alvarez: Yes...I do not know the details.

Prosecution: Isn't it true that you were harboring a fugitive?

Dr. Alvarez: I did not see it that way!

Prosecution: Isn't it also true that you only know Marcus Heilbroner from inside school?

Dr. Alvarez: Yes

Prosecution: So...you never saw Marcus Heilbroner outside of the school day?

Dr. Alvarez: No, I never did.

Prosecution: But you are sure about how he would act in a situation outside of school, right?

Dr. Alvarez: I am pretty confident, yes.

Prosecution: We have no further questions for this witness.

Judge: The witness may step down. Defense may call its next witness.

Defense: We call Marcus Heilbroner to the stand.

Bailiff: Please raise your right hand. Do you promise to tell the truth, the whole truth, and nothing but the truth?

Marcus: I do.

Bailiff: You may be seated.

**Key Concept: The defendant can choose not to take the stand, or “be a witness against himself”. The Fifth Amendment protects people’s rights against self-incrimination – a criminal defendant has the right to remain silent and to decide whether or not to testify.**

In this script, Marcus, the defendant, is going to testify but in many criminal cases the defendant does not testify. The defendant has the right to remain silent under the United States Constitution

and if the defendant decides not to testify that cannot be used as evidence of guilt.

Defense: What is your name and what do you do?

Marcus: My name is Marcus Heilbroner and I am a student.

Defense: Can you tell us how you know Miranda White?

Marcus: I met Miranda White for the first time this year. She goes to the same school that I do. One day she came to the classroom I was in and took me to Dr. Alvarez's office.

Defense: What has your relationship been like with Miranda White?

Marcus: Miranda and I share many things in common. We both love science and math and we are both very interested in time travel.

Defense: Can you tell us how you know Sal Decker?

Marcus: Sal also goes to my school. I do not know him very well, but I do know he is a good friend of Miranda.

Defense: Can you describe why you hit Sal Decker the first time you saw him?

Marcus: A gang of boys who hang out in the garage where my apartment is beat up on my brother. My brother was very angry that I did not help him by hitting the boys who hurt him. I wanted to prove to my brother that I could hit someone, even if they hit me back. Sal was the first person I saw and I hit him. Sal did not hit me back. I only did it to prove my loyalty to my brother. I love my brother!

Defense: Can you tell us about the next time you saw Sal?

Marcus: The next time I saw Sal was on the day of the accident.

Defense: Can you describe the events of that day?

Marcus: I saw Sal walking near my house. When I saw him, I came out because I thought it was time to say how sorry I was for punching him and smacking him across the face. When he saw me, he took off and I ran after him. Then I saw that truck coming and I started to waive my hands and yell for him to look up and get out of the way of the truck. It was all an accident. All I wanted to do was to apologize to him.

Defense: Did you mean to hurt Sal Decker? Marcus: No, all I wanted to do was apologize.

Defense: Did you mean for the Laughing Man to die?

Marcus: Of course not. I never meant to hurt anyone. It was all an accident.

Defense: We have no further questions. The Defense rests.

Judge: Prosecution may cross-examine the witness.

Prosecution: Isn't it true that you waited a long time to apologize to Sal Decker for attacking him

for no reason at all?

Marcus: No. The first time I even saw him after I hit him was the day of the incident.

Prosecution: It does make sense, however, that Sal Decker would be afraid of you since you attacked him for no reason at all, right?

Marcus: (Pause) I guess so.

Prosecution: You should never have attacked him in the first place. It was a sign of bullying, right?

Marcus: Yes.

Prosecution: Again, you could have apologized right away, isn't that true?

Marcus: Yes...but he would not have accepted my apology.

Prosecution: You did not try to apologize then or any time before the tragic incident in which Sal was injured and the Laughing Man died, correct?

Marcus: Well...yes.

Prosecution: If you never attacked Sal, he would not have run from you out of fear and the Laughing Man would not have died, right?

Marcus: I don't know!

Prosecution: We have no further questions for this witness.

Judge: The witness may step down. Is the Prosecution ready to give its Closing Statement?

Prosecution: We are, Your Honor.

**Key Concept - Closing Argument:** Once all of the evidence has been presented each side presents its closing argument. The closing argument is the last opportunity to persuade the jury. In a Closing Argument (also called Closing Statement) the attorney reviews the evidence presented and frames it for the jury in the way that the attorney is asserting it should be viewed.

Prosecution: Your Honor and Ladies and Gentlemen of the jury, today we have heard from witnesses that have shown that Marcus Heilbroner is guilty of involuntary manslaughter. Belle Martinez, an eye witness to the crime, described how she saw Marcus Heilbroner from the window of her store on Amsterdam Avenue as he was chasing Sal Decker. She saw Sal running away from Marcus extremely fast and into oncoming traffic. Then, we heard from young Sal Decker who shared how he ran away from Marcus Heilbroner because he was terrified that Marcus was going to assault him again. Finally, we heard testimony from Miranda White.

Miranda saw Marcus Heilbroner running after Sal Decker. She saw the Laughing Man jump out from nowhere to kick Sal out of the way of the oncoming truck. She saw the truck hit the Laughing

Man and leave him dead on the street. None of these events would have taken place if Marcus Heilbroner had not acted like a bully and attacked Sal Decker for absolutely no reason. Marcus Heilbroner's thoughtless actions have led to the death of the Laughing Man. He must be found guilty of involuntary manslaughter and punished for his actions. Thank you.

Judge: Is the Defense ready to give its Closing Argument?

Defense: We are, Your Honor.

Defense: Your Honor and Ladies and Gentlemen of the jury, today we have heard from witnesses who showed that Marcus Heilbroner is not guilty of involuntary manslaughter. We heard from Sarah White, who told us that she helped Marcus because she knew that Marcus and her daughter, Miranda, were friends. Sarah knew that Marcus Heilbroner was a good kid - another reason she chose to help the Defendant. We heard from Dr. Alvarez, the school dentist who saw Marcus on many occasions. Dr. Alvarez described Marcus as a good student and a good kid. He shared how he recognized Marcus's good character after working with him as his dentist for many years. We learned from Marcus Heilbroner that upon seeing Sal Decker for the first time since he hit him, he only wanted to apologize. What Marcus described was nothing but an unfortunate, tragic accident for which Marcus is deeply sorry. The Prosecution has failed to meet its burden and prove every element beyond a reasonable doubt. Marcus Heilbroner wanted to do the right thing and tell Sal Decker that he was sorry. We ask that you return a verdict of not guilty.

Thank you.

Judge: Prosecution you may make your rebuttal

Prosecution: Thank you, your Honor

Prosecution: I would remind the Jury that none of these events including the horrible death of the Laughing Man would have taken place if Marcus Heilbroner had not acted like a bully and attacked Sal Decker for absolutely no reason. Marcus Heilbroner's thoughtless actions have led to the death of the Laughing Man. He must be found guilty of involuntary manslaughter and punished for his actions.

**Key Concept Jury Instructions:** Once the Closing Arguments are complete, then the Judge provides instructions to the jury on its responsibilities to determine the facts of the case and to apply the relevant law to the facts.

**Judge's Instructions to the Jury:**

Ladies and Gentlemen of the Jury, you are the only judges of whether the witnesses are believable. As you decide this case, you should pay attention to how the witnesses looked and acted when

they were testifying, to what they said, and to whether different witnesses said things that were the opposite of one another. You should pay attention to all the evidence that shows the witness is credible, and you should pay attention to whether a witness might have reason to say what he/she did even though it might not be the truth. You should also ask yourself whether a witness saw the things he/she testified to and whether he/she seems to have a good memory about what he/she saw. Remember that it is up to the prosecution to prove the defendant is guilty. The defense does not have to prove the defendant is innocent; if the prosecution has not proven its case, then the defendant is not guilty. The defendant is presumed innocent unless and until the defendant is proven guilty beyond a reasonable doubt. Reasonable doubt is doubt based on common sense and reason. Reasonable doubt means an honest uncertainty as to the guilt of the defendant.

Reasonable doubt exists when, after careful and impartial consideration of all the evidence in the case, you are not convinced to a moral certainty that the defendant is guilty.

Marcus Heilbronner has been charged with involuntary manslaughter. In order to be found guilty of involuntary manslaughter, the Prosecution must have proven that Marcus Heilbronner (1) committed a crime or a lawful act in an unlawful manner; (2) Marcus Heilbronner acted with criminal negligence; AND Marcus Heilbronner's actions caused the death of the Laughing Man. A person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.

You may not find Marcus Heilbronner guilty unless all of you agree that the Prosecution has proved every element of involuntary manslaughter. You may now proceed to the jury room for deliberations. Your verdict must be unanimous. That is to say, everyone must agree with the decision. When you have reached a verdict please inform the sheriff. He/she will inform the Court that you are ready to return to the courtroom to announce your verdict.

Thank you.

**Key Concept Verdict:** The jury's decision is called the verdict. The juror can find the defendant guilty or not guilty. Remember that the jury never finds the defendant innocent.

In actual criminal trials the jurors must reach a unanimous verdict.