Thinking Like a Lawyer: An Introductory Lesson in Case Briefing

[Adapted from an exercise prepared by Mary White, University of Michigan]

As you have probably heard, from the very first day of classes you will be called upon to discuss in depth the assigned readings, consisting almost exclusively of judicial opinions. Writing a case brief before class for each judicial opinion you read will help prepare you for those class discussions. This introductory lesson, consisting of five steps, will help you learn how to brief a case. During the three “Thinking Like a Lawyer” sessions included in Orientation, you will review the case brief that you write in step five of this lesson, brief an additional case, and then analyze and predict the outcome of a client’s legal problem. To be prepared for those sessions, complete this introductory lesson – all five steps – prior to Orientation.

**Step 1: Preparing to Brief a Case**

Briefing a case is a way of organizing and summarizing the information in a judicial opinion so you can better understand the case and recall it more easily. At this point in your legal career, it is a way of preparing for classes and exams; later in your law school career, you may use a modified form of the case brief in preparing to write a memorandum of law or an appellate brief.

Important court decisions are written as judicial opinions published online and in hardbound case reporters. Most reported decisions are rendered by appellate courts examining what happened when the case was heard in a lower court. The decisions you will be reading for class are usually appellate court opinions. Although there are a variety of ways to structure an effective case brief, the case-brief format that you will be taught in this lesson has eight sections, described below. Theses eight sections describe what you should be looking for when you read a case.

1. **Case Name and Citation.** The citation tells the reader where the opinion can be found in print or online, and when and by which court the opinion was issued.

2. **Facts.** The facts include the determinative facts and enough background facts to tell the story of what happened before the case was commenced.

3. **Procedural History.** The procedural history explains what happened with this case from when it was commenced until it was brought before the appellate court.

4. **Issue.** The issue is the legal question that must be answered by the appellate court. Most cases involve more than one issue.
5. **Pre-existing Rules.** This section sets forth the most important rule or rules the appellate court relied on in deciding the case.

6. **Holding.** The holding is the court’s answer to the issue or issues stated above and its disposition of the case, e.g., affirming or reversing the trial court.

7. **Reasoning.** This section explains how the court reached its decision, including policy concerns, authorities relied on, arguments rejected, and logic employed.

8. **Evaluation.** In this section, you should state your opinion of the court’s holding and reasoning and note any questions you have about the case.

**Step 2: Read the Case**

Read the opinion that begins on the next page a first time to gain a general understanding of the case, keeping in mind the eight categories that your case brief will include. As you read, annotate the case by writing notes and questions in the margins as you go along. These notes will help you understand the case and help you find particular parts of the opinion when you are discussing the case in class or writing about the case in a legal-writing assignment. After finishing your first reading of the case, read it a second time more closely and brief it (Step 3 below). As you read it a second time, continue to add notes and questions in the margins. Briefing the case during the second reading is a good strategy because you will know where the key information in the case is located and you won’t waste time writing down irrelevant information. But don’t be surprised if you must read the case a third time to fill in gaps in your case brief! Even experienced attorneys read an important case multiple times because they see more in the case each time they read it. Also, as you read the case, you may find it helpful to look up some words in a legal dictionary such as *Black’s Law Dictionary*. Although we have edited the case to eliminate most legalese, the case does contain some important legal terms of art.
LEVIN, Justice.

Belton Butler was convicted of carrying a concealed weapon. The people’s evidence tended to show that he was riding in an automobile in which a revolver was found. The judge, in instructing the jury, stated the pertinent language of the statute making it an offense to “carry a pistol whether concealed or otherwise, in a vehicle operated or occupied by” the defendant. He said that the elements of the offense were that there was a pistol in the automobile, that Butler owned or operated the automobile, and, that he knew that the weapon was in the automobile. He did not, however, instruct that “carrying” the weapon was an element of the offense.

We hold that the failure to so instruct requires a new trial and reverse and remand therefor.

I

Belton Butler and a companion, Victoria McLoud, were arrested after two police officers stopped Butler's automobile as he was driving in Highland Park, Michigan. The police had earlier received a report linking Butler’s automobile to an armed robbery and rape committed the previous day and had placed the automobile under surveillance. An officer testified that after the police stopped the automobile and Butler and his companion complied with an order to leave the automobile, he noticed a revolver resting on the automobile's floorboard a short distance from the driver’s seat. Butler and his companion were arrested and charged with carrying a concealed weapon.

1 “A person who shall carry a dagger, dirk, stiletto, or other dangerous weapon except hunting knives adapted and carried as such, concealed on or about his person, or whether concealed or otherwise in any vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him; and a person who shall carry a pistol concealed on or about his person, or, whether concealed or otherwise, in a vehicle operated or occupied by him, except in his dwelling house or place of business or on other land possessed by him, without a license to carry the pistol as provided by law or if licensed, carrying in a place or manner inconsistent with any restrictions upon such license, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 5 years, or by fine of not more than $2,500.” M.C.L. § 750.227.
The officer acknowledged on cross-examination that he had not seen Butler in actual possession of the revolver. This factual gap was bridged by the person who made the report which led to surveillance of Butler’s automobile. That person testified that on the day before Butler’s arrest, he saw him with a “snubnose” gun identical to the one found in the automobile. The prosecution also introduced a statement made by Butler in which he admitted that he knew the revolver was in the automobile but asserted that his companion, Victoria McLoud, had brought the gun into the automobile and that “she was the one who had the gun.”

At the trial, Butler, the only witness called by the defense, denied knowledge of the gun’s presence in the automobile or any previous possession of the gun.

The trial judge instructed the jury:

Now, the defendant in this case is charged under a statute or a law of the State of Michigan which says insofar as pertinent to this case the person who shall carry a pistol whether concealed or otherwise in a vehicle operated or occupied by him, except in his dwelling house or place of business or other land possessed by him without a license to carry the pistol as provided by law, shall be guilty of a felony.

In other words, the elements of the offense which are very simple, are, number one, that there was a pistol in the motor vehicle which was owned or operated by the defendant, and second, that the defendant knew there was a pistol in the motor vehicle. It does not have to be concealed in the vehicle. The elements are the existence of the pistol in the vehicle owned or operated by defendant, and the knowledge of the defendant that the pistol was in the vehicle. In other words, it must be proved, each of these elements must be proved beyond a reasonable doubt that the pistol was in the vehicle, that the vehicle was owned or operated or occupied by the defendant, and the third, that the defendant knew that the pistol was in the vehicle. Those are the elements of the offense. So it is not a complicated offense in any way, as you can see.

(Emphasis added.) The Court of Appeals affirmed in an unpublished opinion. We reverse because the jury was not instructed on an essential element of the offense.

II

The parties disagree concerning the description of the crime of carrying a concealed weapon that would satisfy a trial court’s obligation to charge a jury. The people contend that the elements are that there was a weapon in a vehicle operated or occupied by the defendant and that he knew or was aware of its presence. Butler, who does not contest the legal sufficiency of the evidence against him, contends that such an instruction omits an element of the offense in that a defendant’s knowledge that there is a pistol in an automobile and his mere presence in the automobile are not enough. Butler contends that the people must prove, and therefore the trial court must instruct, that no offense is committed unless the defendant “carried” the pistol. We agree.
The statute provides that a “person who shall carry a pistol . . . whether concealed or otherwise, in a vehicle operated or occupied by him” shall be guilty of a felony.\(^2\) The language of the statute is unequivocal. The offense is not committed unless the defendant “carries” the forbidden instrument. The normal and ordinary meaning of this word requires something more than the potentially fortuitous intersection of presence and knowledge. Given the wording of the statute and the absence of any evidence that the Legislature did not intend “carrying” to be an independent element of the offense, a court would not be justified in reading this word out of the statute.\(^3\)

A central tenet of the criminal law is that “guilt is personal.”\(^4\) An instruction that the accused can be found guilty only if the jury finds that he was carrying a weapon comports with this traditional conception of criminal responsibility. Under the instruction given, which omitted specific reference to “carrying” as an element, an accused could be convicted if he knew that there was a weapon in direct proximity to him even though he may have had no physical contact with the weapon and no knowledge of its presence in the vehicle until shortly before his arrest.

Reading “carrying” out of the statute would risk the conviction of innocents whose only real crime was the proverbial one of being in the wrong place at the wrong time. The criminal law, however, punishes misdeeds, not misjudgment. An accused must author his own guilt. It cannot be ghost-written by others. The statutory prerequisite that a defendant “carry” a weapon before guilt attaches implements an important principle of the criminal law that should not be yielded except upon truly compelling evidence of a legislative purpose to punish without regard to complicity.\(^5\)


The concealed-weapons statute does not punish presence in a car where the pistol was found. The statute's thrust is “carrying concealed weapons without a license.” In other words, the point of the statute is to punish “carrying.” Thus, to convict one who is merely present in a car necessarily rests upon two inferences: (a) an inference that he knows a pistol is present; and (b) an inference that he is carrying the pistol. Therefore, even by

\(^2\) *Id.*

\(^3\) The people cite Michigan decisions to support their contention that instructions on the element of “carrying” or participation in the act of carrying are not required. Some have dealt with the legal sufficiency of evidence necessary to convict, *People v. Moceri*, 294 Mich. 483, 293 N.W. 727 (1940); *People v. Little*, 58 Mich. App. 12, 226 N.W.2d 735 (1975), others with instructional omissions unrelated to those at issue; *People v. Henderson*, 45 Mich. App. 511, 206 N.W.2d 771 (1973), *aff’d* 391 Mich. 612, 218 N.W.2d 2 (1974). None provide guidance in the present case.


showing that someone knew a pistol was present should not lead *automatically* to a conclusion that he was “carrying” the pistol.

III

The people contend that a review of the “totality of circumstances” indicates that, even if a judge must instruct separately on “carrying” as an element of the offense, the elements of the offense were effectively communicated to the jury. These circumstances include (1) the judge’s reading of both the information and the pertinent provision of the statute defining the offense, (2) the judge’s statement of the defense theory that the defendant “was not carrying the pistol and that he did not know of its presence in the vehicle,” and (3) the references in counsel’s closing argument to the “carrying” element.

We conclude that these circumstances, neither separately nor in conjunction, supply an effective antidote for a charge which three times stated that the defendant’s knowledge that the pistol was in the vehicle suffices.

The judge’s obligation to instruct the jury regarding the law is not discharged unless he instructs correctly regarding the elements of the offense. Though some might say the need for correct instruction by the judge is self-evident, the policies supporting this rule of law deserve emphasis.

The people have an obligation to prove all the elements of a crime beyond a reasonable doubt. If a judge may omit an instruction concerning a necessary element, the people are permitted to circumvent this burden of persuasion. A factual determination entrusted solely to the jury may be effectively taken from it and decided adversely to the defendant, even though the people have failed to meet its evidentiary burden.

A judge’s incorrect recitation of the law undermines the purpose of jury instructions. Rather than conforming the jury’s fact-finding to the law, an incorrect instruction poses the unacceptable risk of convicting a defendant of a crime unknown to the laws of Michigan. It is not, therefore, surprising that this Court will scrutinize the contested instruction closely and, upon finding that a judge failed to inform a jury of the true nature of the offense charged, will not countenance claims of “harmless error” but will reverse. *People v. Reed*, 393 Mich. 342, 351, 224 N.W.2d 867 (1975).

This Court has frequently said that a charge to a jury should be viewed in its entirety to determine whether asserted error is prejudicial. But it has not adhered to a “totality of circumstances” doctrine which would permit the comments of those other than the judge to remedy a defective charge. The argued-for approach places too much faith in what is said as opposed to the

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8 See *People v. Schwitzke*, 316 Mich. 182, 184, 25 N.W.2d 160 (1946).
credibility of the person who says it. When counsel correctly states the law in closing argument
and the bench follows with an erroneous charge, is it more accurate to say that the former cures
the latter or that the jury faces a conflict? And if a jury must choose, can it seriously be
maintained that a jury will repose its confidence in an advocate rather than a detached referee?

The probable curative effect of counsel’s remarks is further diminished in the context of the
charge at issue. As is common practice, the judge insisted that his instructions on the law were
definitive. The people’s position is predicated on an assumption that the jury disobeyed the
judge’s admonition. Regardless of whether counsel’s remarks adequately explain the offense, we
are unwilling to look beyond the instructions actually given for circumstances which might
ameliorate their effect.

The people urge that People v. Noyes, 328 Mich. 207, 210, 43 N.W.2d 331 (1950), establishes
that the omission of an element of a crime is not error if the relevant statute containing reference
to the element is read to the jury. Though this was indeed the result in Noyes, the only
justification there offered were two conclusory sentences which disposed of the case at hand but
provided no rule for future cases. This Court has not subsequently relied on Noyes as holding that
the quotation of the relevant statute will invariably remedy an otherwise misleading charge.
Rather a more searching inquiry has been conducted to assess if the charge taken in its entirety is
“fair and sufficiently comprehensive.” People v. Kruper, 340 Mich. 114, 122-23, 64 N.W.2d 629
(1954).

The fairness of a jury charge cannot be assessed in a purely mechanical manner. Juries are not
steeped in the law. They do not methodically parse statutes to discern their meaning. Though the
quotation of the statute may in theory place all the elements of a crime before the jury, such a
recitation may be ignored in favor of the judge’s subsequent and oftentimes more colloquial
explanation of the offense.

We are unable to conclude that the judge effectively communicated the element of “carrying” to
the jury. While the word “carrying” was mentioned several times in the judge’s charge, its legal
significance was never explained to the jury. Moreover, the judge’s explanation of the necessary
elements of the offense was calculated to divert the jury from attending to the legal significance
of “carrying.” Three times the judge repeated the necessary elements of the offense and on each
occasion made no mention of the people’s obligation to prove or of the need for the jury to find
the “carrying” of the weapon. A reasonable juror could have concluded that a conviction need not
be predicated upon proof or a finding of “carrying,” and that the word was merely a shorthand

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9 It is accepted, in jurisdictions other than Michigan, that reading the information or statute does not alone make for an adequate instruction on the elements of an offense, and that the adequacy of the instruction depends on the charge as a whole. See United States v. Harris, 346 F.2d 182, 184 (4th Cir. 1965); United States v. Hernandez, 290 F.2d 86 (2d Cir. 1961) (failure to go beyond general language of statute and define or explain meaning of “possession” was reversible error); People v. Henderson, 25 Cal. App. 3d 371, 101 Cal. Rptr. 129 (1972); State v. Kimbrough, 109 N.J. Super. 57, 262 A.2d 232 (1970) (failure to instruct regarding distinction between passenger and driver with respect to meaning of possession of stolen article is reversible error); People v. Zurita, 76 A.D.2d 871, 428 N.Y.S.2d 495 (1980).
We conclude that the judge did not adequately discharge his obligation to instruct the jury regarding the applicable law of the case.

Our insistence on a proper charge does not stem from an overdeveloped sense of procedural nicety. In the instant case there was evidence which, if believed, would have negated the element of “carrying” and may have led to an acquittal.

IV

Though we have decided that the people must prove that the defendant carried the pistol and that the jury must be separately instructed on that element of the offense, the exact contours of this requirement necessarily remain unsettled, left to await the exacting discipline of future cases which directly present the question.11

Reversed and remanded for a new trial.

KAVANAGH, FITZGERALD, MOODY and RYAN, JJ., concur.

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10 For an expression of doubt that a general instruction can ever cure a misleading specific one where there is no rhetorical inconsistency between the two, see Sandstrom v. Montana, 442 U.S. 510, 518, n.7, 99 S. Ct. 2450, 2456 n.7, 61 L. Ed. 2d 39 (1979).

11 Other jurisdictions have dealt with what it means to carry a weapon in a motor vehicle. See generally Annotation: Offense of Carrying Concealed Weapon as Affected by Manner of Carrying or Place of Concealment, 43 A.L.R.2d 492.

The case law indicates that the concepts of “carrying” and “possession” have much in common. See State v. Benevides, 425 A.2d 77 (R.I., 1981), which states that a defendant carries a weapon when he exercises some element of intentional control or dominion over it. Most jurisdictions have held that this control need not amount to “actual possession” but that it encompasses “constructive possession” of the forbidden instrument as well. See Brown v. United States, 58 U.S. App. D.C. 311, 30 F.2d 474 (1929).

Hard and fast rules regarding what circumstantial evidence is sufficient to sustain a conviction of carrying a weapon in a motor vehicle have not evolved. The decisions have, however, emphasized the relevancy of the following factors either alone or in combination: (1) the accessibility or proximity of the weapon to the person of the defendant, (2) defendant’s awareness that the weapon was in the motor vehicle, (3) defendant’s possession of items that connect him to the weapon, such as ammunition, (4) defendant’s ownership or operation of the vehicle, and (5) the length of time during which defendant drove or occupied the vehicle. See State v. Miller, 238 Or. 411, 395 P.2d 159 (1964); Commonwealth v. Whitman, 199 Pa. Super. 631, 186 A.2d 632 (1963); People v. Davis, 157 Cal. App. 2d 33, 320 P.2d 88 (1958); Waterstaat v. United States, 252 A.2d 507 (D.C. App.1969); Commonwealth v. Collins, 81 Mass. App. 624, 417 N.E.2d 994 (1981).

We do not wish to be understood, by reference to the foregoing factors, as expressing any view with regard to their relevancy or importance.
Step 3: Writing Your Case Brief

Open your word-processing document and prepare to write out a brief using the eight categories as headings. The following material will guide you in writing each section of your case brief.

1. **Case Name and Citation.** The rules for writing a case name and citation in formal legal writing are given by *The Bluebook*, one of the books that you will need for your legal writing course. For a case brief, however, it is not essential that the case name and citation conform exactly to *The Bluebook* (however, once you learn the correct form, you might as well use it).

   For now, you can write the case name using the names that are identified in the case heading in all capital letters. You do not include the designations such as appellee or defendant. Thus, in this instance, the case name is simply “People v. Butler.”

   The citation includes three important elements: (1) where the case can be found; (2) the court that decided the case; and (3) the year that the case was decided.

   The first important element tells a reader where the case can be found, usually in a published case reporter. In a textbook, the citation for a case will usually be given to you, and you can just copy it into your brief, with perhaps a reference to the textbook page number. If the case you are briefing comes from one of the published case reporters, as this one does, your citation will include the name of the reporter, the volume number, and the page on which the opinion begins. In this instance, the name of the reporter is “North Western Reporter, 2d Series,” the volume is number 319, and the case begins on page 540 of that volume. In relating this information in proper *Bluebook* form, we would list the volume first, then give the name of the reporter using appropriate abbreviations, and then list the page: “319 N.W.2d 540.” For now, give the citation elements in that order (volume; reporter; page number), but do not worry about the correct abbreviation of the reporter.

   Often a case will have been published in more than one reporter, and so an alternative citation may also be listed, such as “413 Mich. 377” for this case. For case briefing, it is usually sufficient to just give the citation listed at the top of the case and ignore any alternative citations.

   The second important element is the court that decided the case. This information goes in parentheses after the reporter information. Our case was decided by the Michigan Supreme Court. As you will learn, the appropriate *Bluebook* abbreviation for that court is just “Mich.”

   The last important element is the year that the case was decided. This information goes in the parentheses immediately after the court.

   Thus, the case name and citation for our case in *Bluebook* form is *People v. Butler*, 319 N.W.2d 540 (Mich. 1982), and we can write the citation in that form at the top of our case brief. However, until you learn proper *Bluebook* citation, just be sure to include the important information in a form you understand. For example, it would have been satisfactory to write something like “People of the State of Michigan v. Butler – Supreme Court of Michigan – 1982 (319 North Western 2d 540).”
2. **Facts.** This section of the case brief presents the story facts – the events that occurred that led up to the legal action. The hard part of writing the facts for a case brief is deciding what should be included and what should be left out, i.e., determining what are the relevant facts. You learn which facts are relevant by seeing what issues the court discusses and what facts the court itself uses in deciding those issues. So, the first thing to do is to read through the entire opinion. Then, as you read the facts in the opinion on your second reading of the case, ask yourself whether a particular sentence or statement is really crucial to understanding the case. Obviously, you do not want to copy into your brief everything the court tells you.

In *People v. Butler*, the court starts the opinion with a brief summary of what the case is about and then provides the detailed facts in Part I of the opinion. Courts often do this, though not always as thoroughly as the court did here. Sometimes the court will mention additional facts later in the opinion, in its analysis of an issue, so stay alert throughout your reading of the case in order to locate all of the relevant facts.

After selecting the facts that you want to include in this section, you must decide the order in which you want to present them. Arranging them in chronological order, even if the court did not present them that way, is usually the most effective way to clarify what happened.

Now, select and arrange the relevant facts in *People v. Butler* and write them in your case brief. **Do not proceed further with this exercise until you have done this.**

3. **Procedural History.** This section is where you note the procedural steps by which an occurrence in the real world became the case on appeal. Procedural history is the kind of information you may tend to gloss over, thinking it does not matter to the substantive issues in a case. Substantive issues, however, can be raised only in certain procedural contexts, so you need to train yourself to notice things like what pleadings or motions were filed by which party,¹ and what decisions were made by the judge that resulted in an appeal.

For a criminal case, you should include the crime that the defendant was charged with or convicted of, any intermediate appeal that was taken, and the disposition made by any intermediate appellate court. For a civil case, you would similarly include the basis for the plaintiff’s lawsuit, the outcome in the trial court, any intermediate appeal that was taken, and the disposition made by any intermediate appellate court.

For both criminal and civil cases, you should specifically note the trial court’s action or failure to act that is the basis for the appeal and, in addition, include a short statement of the appellant’s argument why the lower court’s action or inaction was erroneous. As with the fact section, presenting the procedural history in chronological order provides the greatest clarity.

Now, write out a statement of the procedural history for your case brief. **Do not proceed further with this exercise until you have done this.**

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¹Be sure you know which party was the plaintiff and which was the defendant in the trial court and which one was the appellant and which was the appellee in the appellate court.
4. **Issue.** In stating the issue or issues, you identify the legal question or questions the court had to decide. Sometimes the court will make it easy for you and say, “The issue we decide is . . .” or something equivalent. Often it will not. Sometimes determining the precise issue that was before the court requires a great deal of thought.

If you are having trouble stating the issue, ask yourself this question, “What does the appellant say the trial court did wrong?” A basic rule about appellate courts is that they do not retry cases. Instead, they correct errors. This means the appealing party must claim the trial court did something it should not have done or failed to do something it should have done. The substantive issue is likely to be bound up with the trial court’s error. If you find the issue is too general – appellant argues the evidence was insufficient to convict, or appellant challenges the instructions – then ask, “What grounds does the appellant have for arguing, or the court for deciding, that the evidence was or wasn’t sufficient, or that the instructions were or were not valid? What element of the offense did the government fail to prove? What was improperly left out of or improperly added to the instructions?” Your final formulation of each issue should be question that can be answered with a “yes” or “no.”

Now, write in your case brief the issue or issues that you think the Michigan Supreme Court had to decide. Do not proceed further with this exercise until you have done this.

5. **Pre-existing Rule(s).** The parties in the *Butler* case disagreed whether the trial court had properly instructed the jury. When faced with a question about the law, a court must do exactly what any attorney or law student does – find the law that applies to the case. Courts will generally examine in-jurisdiction statutory and case law first, because such law may be mandatory. Then, when further guidance is needed, the court will look at persuasive authority from other jurisdictions. The court is helped in this process by reading the briefs that have been filed by the attorneys.

A judicial opinion will often mention many rules in justifying its outcome. In this section of your case brief, you want to list only the most-important rules that underlay the court’s decision. You want to avoid listing less-important rules that the court used to justify its reasoning. Determining whether a rule is sufficiently important to include in this section takes judgment and experience. Certainly, in this case brief, we would want to include the statutory rule that establishes the crime of carrying a concealed weapon. However, we would likely not include the rule that the prosecution must prove all the elements of a crime beyond a reasonable doubt.

To keep this section of your case brief to a reasonable length, you will generally list only one or two pre-existing rules for each issue that the court decided. There will be exceptions, of course, but if you find that you have listed four or more pre-existing rules, you are probably including rules that are not critical and would fit better in the Reasoning section of your case brief.

Now, write in your case brief the pre-existing rules that you think the court applied in reaching its decision. Do not proceed further with this exercise until you have done this.
6. **Holding.** A holding is the court’s answer to a legal issue before it, together with the disposition of the case. A holding may be a new legal rule that changes or expands upon a pre-existing rule. Or a holding may be the result of the application of the pre-existing rule to the facts of the case. For each issue that you identified, you will have a corresponding holding.

Sometimes a court will be explicit in stating its holding: “We hold . . . .” Other times, the court will not be that explicit in its opinion and you will have to formulate the holding from the statement of the issue before the court (either as the court phrased it or as you phrased it in your case brief) and from the court’s ultimate disposition of the case.

Now, write in your case brief what you think the court held in this case. You should have a holding for each issue you listed in your case brief. In addition, state what the court did as a result of its holding or holdings (e.g., reverse, affirm, or remand). Do not proceed further with this exercise until you have done this.

7. **Reasoning.** This is where you explain why the court held as it did. One difficulty that is likely to arise here, especially for a new law student, is lack of familiarity with legal terms, theories, and background. You can address this difficulty in part by looking up words or phrases that are unfamiliar or are used in unfamiliar ways. Then, you should read the opinion enough times to be sure you are following the argument. If there is something you still do not understand, talking about the case with your professors or classmates will help.

If the opinion is divided into sections, be sure you understand the basic topic of each section. In this case, Part I tells you the facts and procedural history. Part II discusses whether “carrying” is an element of the offense separate from and in addition to “presence” and “knowledge.” Part III considers whether the jury was adequately instructed on the offense anyway, that is, whether the judge’s failure to explicitly include “carrying” as one of the elements of the offense was cured by other things the judge or counsel said.

Once you understand the structure of the court’s opinion, you must decide, as with the facts, what to leave out. One way to start is to summarize each paragraph in a sentence or two. If you do that for Part III, it comes out something like this:

1. The People contend the requirement of “carrying” was adequately communicated to the jury by the judge’s reading the information and the statute, the judge’s stating the defense theory that the defendant wasn’t “carrying,” and counsel’s references in closing argument to the “carrying” element.

2. These circumstances do not cure the defective charge in this case.

3. The judge must instruct correctly concerning the elements of the offense.

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2 *Black’s Law Dictionary* or *A Dictionary of Modern Legal Usage* are likely to be more helpful than an ordinary English dictionary.
4. The reason for this is the obligation of the state to prove all elements beyond a reasonable doubt.

5. An incorrect instruction poses a risk of convicting for acts which are not criminal.

6. The charge to the jury should be viewed in its entirety but that does not mean comments of counsel can correct a defective charge.

7. Number 6 is particularly true where the judge insists his instructions are definitive.

8. In *People v. Noyes* the court held that reading the statute to the jury cured the defect of failing to instruct on an element of the offense, but the case hasn’t been followed and the real question is whether the charge in its entirety is fair and comprehensive.

9. Fairness cannot be assessed mechanically.

10. Here, the judge did not communicate the requirement of “carrying.” A reasonable juror could conclude conviction did not require proof of “carrying.”

11. In this case there was evidence to negate the element of “carrying.”

Now, write in your case brief a condensed summary of the court’s reasoning. To do that, first summarize the paragraphs in Part II, as illustrated for Part III above; then write a condensed summary for each of Parts II and III that includes only the most important and specific reasons the court gave. Do not proceed further with this exercise until you have done this.

8. **Evaluation.** This is your opinion of the decision. What do you think about it? Was the court’s reasoning persuasive? Was the outcome fair? In this section, you should also note any questions you have about the decision or its implications for future cases.

**Step 4: Compare Your Case Brief with the Sample**

On the next page is a sample case brief for *State v. Butler*, followed by commentary about its content. You should compare your case brief with this sample. In self-evaluating your case brief, remember that your case brief is a tool to be used by you to understand the case. Thus, the first question you should ask yourself upon reviewing the sample brief is whether it helps you to better understand *State v. Butler*? The second question you should ask is what information does the sample brief include that was omitted from your case brief? Is that additional information helpful to understanding the case? Conversely, what information does the sample brief leave out that you included in your brief? Do you agree that information is not critical to understanding the case? As with any sample, you should approach it critically and not presume it to be “perfect.” Do not hesitate to critique the sample and to defend the strengths of your own brief where it differs from the sample.

Following the sample case brief and commentary are answers to some frequently asked questions about case briefing.
**Case Name and Citation:** People v. Butler, 319 N.W.2d 540 (Mich. 1982).

**Facts:** Police stopped defendant Butler’s car while he was driving with a companion. After the two got out of the car, one officer noticed a revolver on the floorboard a short distance from the driver’s seat. The arresting officer did not see the revolver in Butler’s actual possession, though an informant had reported seeing Butler with an identical gun the day before. Prior to trial, Butler stated that he knew the gun was in the car but that his companion had brought it. However, at trial, Butler denied previous possession of the gun and said he did not know the gun was in the car.

**Procedural History:** Butler was charged under a statute making it a felony to “carry a pistol . . . in a vehicle operated or occupied by him.” The trial court instructed the jury that the state had to show: 1) that the pistol was in the vehicle, 2) that Butler knew it was in the vehicle, and 3) that the vehicle was owned or operated by Butler. Butler was convicted and he appealed. The Court of Appeals affirmed the trial court’s decision. Butler appealed to the Michigan Supreme Court, arguing that “carrying” was a separate element in addition to the three elements included in the trial court’s instructions.

**Issues:** Is “carrying” an element that the people must prove in addition to the presence of the gun in the vehicle, the defendant’s knowledge of the gun’s presence, and the defendant’s operation of the vehicle? If “carrying” is a separate element, were the trial court’s instructions to the jury adequate under the “totality of circumstances”?

**Pre-existing Rule(s):** 1) Statutory rule: MCL § 750.227 says it is illegal to “carry a pistol . . . whether concealed or otherwise in a vehicle operated or occupied by him . . . .”
2) Case law rule: Judge does not fulfill obligation to instruct the jury regarding the law unless the judge instructs correctly regarding the elements of the offense.

**Holding:** First, “carrying” is an essential element of the offense. Second, the trial court’s instructions were not adequate under a “totality of circumstances” when, even though the judge and counsel made some references to “carrying,” the judge three times said that the defendant’s knowledge that the gun was in the vehicle was enough for a conviction. The Supreme Court reversed Butler’s conviction and remanded for a new trial.

**Reasoning:** The plain language of the statute unequivocally requires that the defendant “carried” the weapon. The normal meaning of “carry” requires more than presence and knowledge. However, under the instruction given, an accused could be convicted if he knew the weapon was near, even if he had no physical contact with it and did not know the weapon was in the vehicle until shortly before arrest, violating the tenets that “guilt is personal” and the criminal law “punishes misdeeds, not misjudgment.” With regard to the adequacy of the jury instructions, the state contended that the element of “carrying” was communicated to the jury because the judge read the information and the provision of the statute defining the offense (both of which refer to “carrying”), the judge repeated the defense theory that Butler was not “carrying” the weapon, and defense counsel referred to the “carrying” element in closing argument. But, the comments of persons other than the judge cannot remedy a defective charge to the jury. Nor does reading the statute cure the defect. Although the word “carrying” was mentioned, its significance was not explained, and a reasonable juror could have concluded that proof of “carrying” was not required. The Court left for future cases a determination of what “carrying” means.

**Evaluation:** (Your opinion)
Commentary about the Sample Case Brief

2. Facts. If you look at the sample brief and then at the case, you see that many facts have been omitted, including the name of Butler’s companion, the place where he was driving, and the reasons the police stopped his car. Why are these facts left out? If the court thought they were important enough to include in its opinion, why do they not belong in the brief? And why, having left some things out, does the sample brief include two sentences about Butler’s statements concerning the gun?

First, a court writes an opinion for reasons that differ from your reasons for briefing a case. The court may include many things in the facts, even though they are not strictly relevant to the issue before it, in order to validate its opinion. If the court upholds a criminal conviction, for example, it might include grisly details of the crime, even if the sole issue is the defendant’s right to counsel. An opinion needs to tell what feels to the reader like a complete story, and it needs to be convincing. Facts, historical background, either legal or factual, and full discussions of cases may all be necessary to make the opinion persuasive. However, your brief does not need to be persuasive. It is only a form of note-taking – a way of summarizing the case for your own purposes.

Second, the brief leaves out certain information for other reasons. First, it leaves out the companion’s name because “companion” sufficiently identifies Butler’s friend – that is, there’s only one – and because she is not discussed in the rest of the opinion. Why not leave out the companion altogether? Because Butler needs some explanation for the presence of the gun. Second, the brief leaves out the fact that they were arrested in Highland Park, Michigan, because in this case it does not matter. But remember that a category of facts irrelevant in one case may be highly relevant in another. For example, if the question were whether the police had authority to arrest for a crime that occurred outside their jurisdiction, you would include the place of arrest in your brief. Third, a good bit of the court’s factual statement relates to the crime committed the previous day. The court includes that information to answer the question you would have if it weren’t there – how did the police know to stop him – and you would include it in your brief if the question were the validity of his arrest. But for the issues presented, it does not matter how they came to stop his car.

Finally, why does the brief include Butler’s statements? One of the issues in this case is whether the court gave the jury an adequate instruction on “carrying” a weapon. Whether an instruction on a particular element of an offense is adequate under the “totality of circumstances” may depend on whether there is conflicting evidence regarding that element. Here, the instruction on “carrying” would likely have been held to be adequate, i.e., not prejudicial to the defendant, if the gun had been found in a jacket that Butler was wearing, because then the only possible conclusion that the jury could have reached would have been that the defendant was “carrying” the weapon. However, Butler’s statements about his knowledge and prior possession of the gun presented conflicting evidence from which the jury could have inferred, had it been properly instructed, that the “something more” required for “carrying” did not exist.
3. **Procedural History.** The procedural history section of the sample brief includes a summary of the actual instructions given by the trial court. Is this necessary? Since Butler has attacked the instructions, they should be included somewhere and they seem to fit more naturally here than any other place in the brief. It is possible, however, that in another case, you would include them in the issue section, or in the facts or reasoning section.

Is it necessary to start the procedural history, as the sample brief does, with a sentence about the crime Butler was charged with? Not necessarily. If you included this sentence in the fact section, you would not have to repeat it in the procedure section. However, if there were some discrepancy between what he was charged with and what he was convicted of, and if that discrepancy were important, it would probably be better to keep the charge in the procedure section where it would not get overlooked. The thing to keep in mind in deciding where things go is that the brief is meant to be a tool for your use. If you are not sure where something belongs, then ask “What is the best way to do this?” and “Where will I most likely look to find this information when I need it later?”

Regardless of where you included the crime he was charged with, you should have included the wording of the relevant statute, “carry a pistol . . . in a vehicle operated by him.” Any time a statute is involved, in civil as well as criminal cases, you should include the relevant statutory language somewhere in your brief.

4. **Issue.** In Butler, the substantive issue is whether the statute requires that the people prove that the defendant was “carrying” the pistol, and not merely that it was in the car he was driving and he knew it was there. In other words, is “carrying” a separate element of the crime? If the answer to that issue is “no,” that would end the case. But, as is often the case, an answer favorable to the appellant on that issue does not end the case, but gives rise to a second issue: the adequacy of the trial court’s instruction to the jury. That is, the people presented two alternative arguments: “carrying” is not a separate element, and even if it were, the court’s instruction regarding it was adequate. Because the court had to address the people’s alternative argument, both issues had to be included in the case brief.

5. **Pre-existing Rule(s).** In this case, the court began by closely examining the language of the statute creating the offense. Thus, the statute provides a pre-existing rule that is essential to answering the first issue. The case brief could have given as additional pre-existing rules relevant to the first issue that “guilt is personal” or that the criminal law “punishes misdeeds not misjudgement,” but the writer decided those rules were not specific enough to include here, and so appropriately included them in the Reasoning section. Similarly, for the second issue, the sample brief gives only one pre-existing rule, that the obligation to instruct the jury regarding the law requires the judge to instruct correctly regarding the elements of the offense. As an alternative to that pre-existing rule, the sample brief could have given the rule that the court will reverse “upon finding that a judge failed to inform a jury of the true nature of the offense charged.” Either of those rules suffices; there would be little point, however, to including both as pre-existing rules because they are substantially similar in effect.
6. **Holding.** In this case the court said many things, but it held two things: (1) that “carrying” is an element of the statutory offense (Part II of its opinion), and (2) that the jury instructions were not adequate to correctly instruct the jury regarding the “carrying” element and that error required a new trial (Part III of its opinion).

Note how the two holdings parallel the two issues. If you had trouble formulating the holdings, or if your case brief did not list both holdings, this would be a good time to review your issue statements. Did you list two issues? Do your holdings track your issues? Because issues and holdings go together, it is generally advisable to work on them in tandem. After you’ve drafted both your issues and your holdings, compare them and then edit them so they track each other.

7. **Reasoning.** The first three sentences of the sample brief provide the reasoning for the first holding, that “carrying” is a separate element of the crime, requiring something more than just presence and knowledge.

The next four sentences of the sample brief provide the reasoning for the second holding. The sample brief includes equivalents of sentences 1, 6, 7, 8, and 10 listed in Step 3 that summarized Part III of the opinion. Sentence 1 told you what the parties’ arguments were and sentences 6, 7, and 8 responded to the three circumstances alleged to cure the defective instruction. Sentence 10 provided the bottom-line reasoning that supported the holding that the trial court erred: a reasonable juror could have concluded that conviction did not require proof of “carrying.”

The reasoning for the second holding essentially omitted sentences 2, 3, 4, 5, 9, and 11 from Step 3. Sentence 2 is only a summary rejection of the People’s argument; it does not articulate any reasoning. Sentence 3 was included earlier in the case brief, as the pre-existing rule for this issue. Sentences 4 and 5 are general statements relating to the importance of giving correct instructions and are not specific to this case. Likewise, sentence 9 is a general statement. Any of those sentences could have been included in the reasoning, but the writer of the sample brief deemed them too general to be necessary for the court’s decision and chose instead to focus on the reasoning that focused the facts of this case. Sentence 11 explains why the judge’s error was not harmless. The sample brief did not include it in the reasoning because the writer thought it was sufficiently clear from the facts. However, it too could have been included to make explicit that the error of not giving the “carrying” charge may have prejudiced the defendant and was not simply a “procedural nicety.”

The process of understanding and writing about the court’s reasoning was time consuming, was it not? Although time consuming, do not skip or minimize the “reasoning” step in briefing. You will discover before the semester is over that your ability to discern the court’s reasoning is critical to using the case effectively to support your analysis in legal writing and to performing well on your final examinations.
Frequently Asked Questions about Case Briefing.

1. Does every brief have to have the listed headings: Case Name and Citation, Facts, Procedural History, Issue, Pre-existing Rule(s), Holding, Reasoning, and Evaluation?

No. As this exercise has emphasized, the brief is a tool for your use. Different reference books set out different case-brief formats, and your professors may have slightly different expectations for what you should include in a case brief. For example, one professor may not ask for procedural history, while another may ask for the parties’ arguments. The eight categories included in this exercise are not set in stone; they are meant to be useful ways of organizing the information in the case. You can easily adapt the eight-part format to a format that better suits a particular professor’s preferences or better suits a particular case. For example, if the case you are briefing includes a dissenting opinion, you may want to include a “Dissenting Opinion” category in your case brief that outlines the reasoning of the dissent, and then in the “Evaluation” section you might note whether you agree with the majority or the dissent and why.

2. How long should a brief be?

It depends on the case. Many cases can be adequately briefed in a single page of single-spaced text, as in the sample brief. Some cases will be more complex and require a second page. If your briefs are generally two or more pages, you are likely including things you do not need.

Also, although the sample brief is written in complete sentences, you will probably develop a shorthand method for writing your briefs for class, including using short phrases and clauses instead of complete sentences, and abbreviations such as “P” or “π” for plaintiff and “D” or “Δ” for defendant. Using shorthand is fine, but never omit important information.

3. Why should I bother with briefing cases?

At the beginning of law school, most students do not know how to read a case the way a lawyer does. Briefing the cases you will discuss in class forces you to pay close attention to them and will help you learn what information in an opinion is relevant to a lawyer. A case brief enables you to use and discuss the cases better than you would if you merely read them or even read and underlined them. Later, when you research a legal problem, your experience in briefing cases will improve your ability to decide which cases are most relevant to your problem. Finally, practice in summarizing cases and, in particular, stating the issue, holding, and reasoning, will help you with your writing assignments by training you to be both specific and concise in your explanations of precedent cases. Although you will probably stop formally briefing every case you read at some point in your law school career, you should start out doing so and continue briefing cases until you have developed the habit of reading cases closely and critically, in the same way that an experienced lawyer would.
Step 5: Prepare a Case Brief for Orientation

Orientation includes three “Thinking Like a Lawyer” sessions. In these sessions, you will analyze a hypothetical client’s problem and predict how a court would likely decide a legal issue presented by the client’s problem. The first step in analyzing the client’s problem is to learn about the law that the court would apply to decide that issue.

The legal doctrine that the court would apply in this instance is known as “adverse possession,” under which a person may acquire ownership of land from another by using that land for a sufficient period of time. The case below is from Vermont and concerns adverse possession.

Please brief the case using the format explained in Step 3 above:

1. Case Name and Citation.
2. Facts.
3. Procedural History.
4. Issue(s).
5. Pre-existing Rule(s).
6. Holding(s).
7. Reasoning.

Print out and bring your completed case brief to the first “Thinking Like a Lawyer” session during Orientation (Thursday afternoon). You will not hand in the brief but you will need it to actively participate in class. Also bring a copy of the case so that you can refer to it during the class discussion.

Remember, a case brief should be concise. Therefore, your brief should be no longer than two typed pages (double-spaced) or one page (single-spaced).

Good luck with your brief!
In the present case, the plaintiff, Ted Williams, claimed that he owned land by an alleged adverse possession of it for twenty-one years. The trial court ruled in favor of the defendant, Howard Johnson, holding that the plaintiff had failed to prove adverse possession, and the plaintiff has appealed.

The plaintiff owns and lives on a rectangular two-acre parcel of land in the town of Arlington, Vermont. The northern boundary of plaintiff’s parcel borders on Hampton Road, a public highway. The defendant holds title to a six-acre parcel of land that is adjacent to and on the west side of plaintiff’s property. The defendant’s parcel also borders on the public highway and is in the shape of an “L,” with the base of the “L” running the full length of the southern boundary of plaintiff’s property. The base of the “L” is one-half acre in area and is the area that the plaintiff claims to have adversely possessed. The plaintiff makes no claim to the other five-and-a-half acres owned by the defendant. Both parties’ parcels are moderately forested with some open patches, and each has a home on a small cleared area located close to the highway. Because of trees and the distance between the homes, neither home can be seen from the other.

[183] The plaintiff’s claim arises from his use of the disputed half-acre of land as an orchard during the apple season, which usually lasts from three to four weeks during the month of September. The plaintiff used the property in dispute for twenty-one years to collect apples and sell them at market. There have been four productive apple trees on the property throughout that period. Among the other varieties of trees on the land, there are approximately twenty sugar-maple trees on the property. The plaintiff pruned only the apple trees over those years, and built two wooden structures, resembling trellises, on the property to support low-hanging branches on two of the aged apple trees. The plaintiff did not tap any of the sugar-maple trees or use any of the other trees for firewood or other purposes during the twenty-one years. The plaintiff also crossed the disputed property almost once daily to collect water from a spring on the southern edge of the defendant’s property.

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3 Williams v. Johnson is a fictional case, and its citation is manufactured for purposes of this assignment. Likewise, the cases cited in Williams are also fictional. The numbers in brackets, e.g., “[183],” that appear in the opinion indicate the page splits in the printing of the opinion in the Atlantic reporter.
The surrounding property owners include farmers, maple-syrup producers, and owners of apple orchards. All the other orchards in the area are at least one acre in size and contain at least fifty apple trees. The maple syrup producers in the area own properties that have trees numbering anywhere from twenty-five to more than 500 trees, depending on the acreage of their holdings.

Possession that will work an ouster of the owner in Vermont must be open and notorious, hostile, and continuous for 15 years. The tenant must unfurl his flag on the land, and keep it flying so that the owner may see, if he will, that an enemy has invaded his dominions and planted his standard of conquest. *Jane v. Austin*, 11 A. 305, 309 (Vt. 1887). Continuous use is not synonymous with constant use, but it should be the kind of use an average owner would make of the property, taking into account its nature and condition. *Ray v. Bradbury*, 122 A. 782, 785 (Vt. 1926).

Although the plaintiff’s use of the property has been hostile to the defendant’s ownership, the plaintiff’s occupancy of the disputed half-acre has been too superficial and sporadic to constitute adverse possession. He used the property most extensively during apple season, three to four weeks a year. However, the disputed property contains few apple trees. The trees appear to be spread throughout the half-acre, not together like one would expect in an orchard. This court will not require an owner to check his apple trees in order to retain his hold of the land when the property contains so few apple trees that this use would be unexpected. Perhaps the plaintiff would have adversely possessed the property had he used it for maple syrup production. That is, considering the surrounding property owners’ usage of land in the area, and the number of maple trees on this property and surrounding properties, one might expect an average owner to use the property for maple-syrup production rather than collecting and selling apples, and the plaintiff might have used it continuously had he used it annually to collect maple syrup. Therefore, the plaintiff's annual entries to collect apples to be sold at market, his care of those few trees, and his walks across the property to collect water, constitute a succession of trespasses rather than an actual and continuous possession of the property.

[184] The plaintiff’s possession is also not open and notorious. His travels across the property to collect water at a spring leave no sustaining mark. There is no evidence that the structures he built on the property are readily seen by passersby, as the parcel does not border the road. The structures are not built by a property line, and they are not easily seen from a distance. His entries onto the property to collect apples, to prune and care for a few trees, and to collect water, have not left the kind of impression upon the land necessary to give adequate notice that he has invaded another’s dominions and planted his standard of conquest.

The ruling of the court below is AFFIRMED.