

# Theory of Defense

The Positive Case for Innocence

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# Positive Case for Innocence

- Tell compelling story
- Promote narrative of innocence
- Not reaction to DA theory

# Negative Case for Not Guilty

- Reactionary attack to DA case
- Building defense based on what DA cannot prove
- Arguing client is not guilty because DA cannot prove BARD
- Jury thinks probably guilty, you found technicality or loophole

# Beyond a Reasonable Doubt

- Client maybe or probably committed crime
- But find not guilty anyways
- Not confident about client's innocence

# Defenders of Constitution

- Noble cause of defense
- We are not cheap tricksters
- Use authentic language
  - Relate to jurors with powerful themes and theories
  - Don't adopt language of oppressor

# Language of Oppression

- Escorted client to the ground
- Delivered compliance strike
- Proactive policing

# Defenders of Constitution



# Theories of Defense - 6

- Did it happen?
- Was it client?
- Was it a crime?

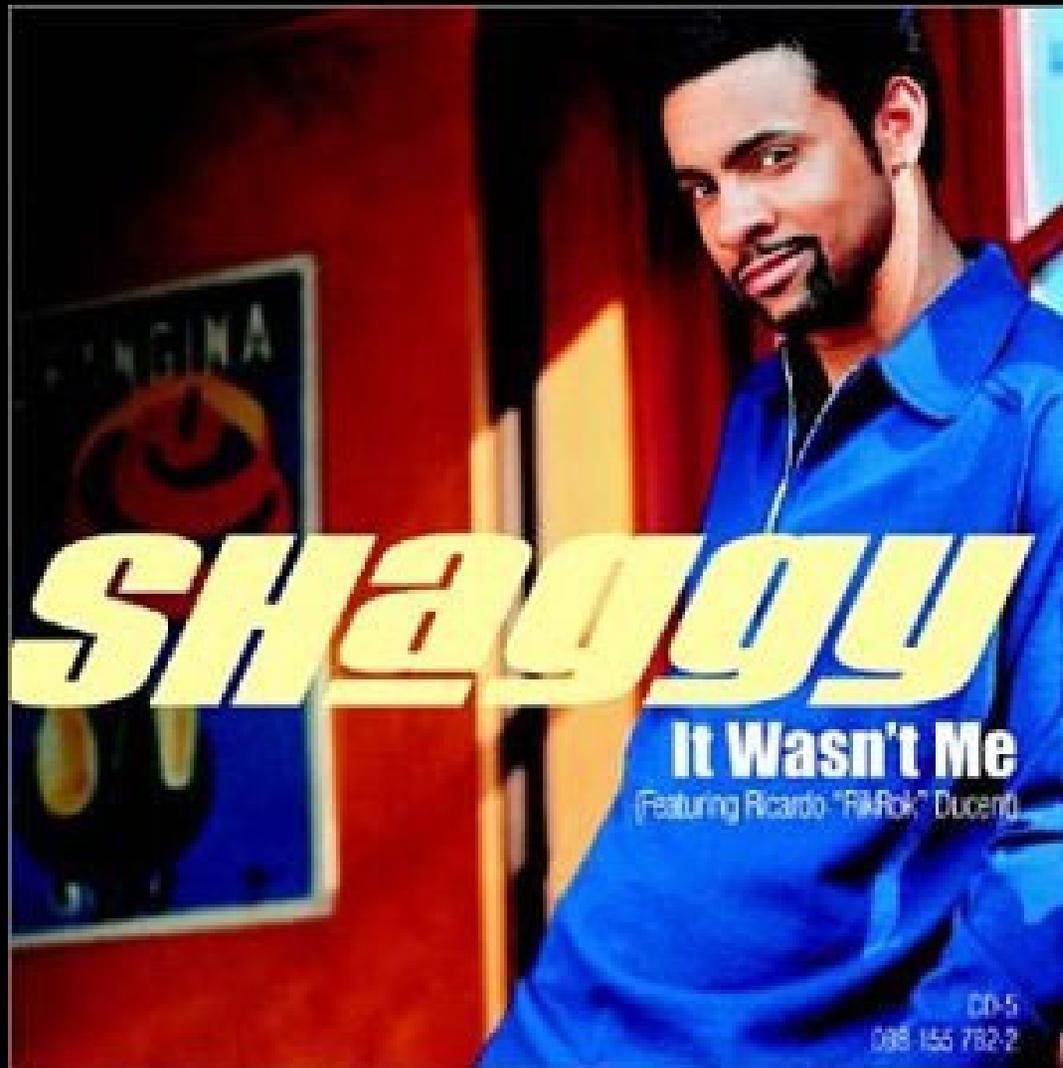


*Protecting  
justice  
for all*

# 1. It never happened



## 2. It happened, but it wasn't me



## 2. It happened, but it wasn't me

- Mistaken identify
- Alibi
- Alternative suspect

3. It happened, I did it, but it wasn't a crime



### 3. It happened, I did it, but it wasn't a crime

- Accident
- Self-defense
- Consent
- Reasonable parental discipline

# 4. It happened, I did it, but it wasn't *this* crime

- Lesser included offense
- DA put wrong charge

# 5. It happened, I did it, it was a crime, but I'm not responsible

- NGI

- Not guilty by reason of mental disease or defect

- Entrapment

- Duress

6. It happened, I did it, it was a  
crime, but ...



## 6. It happened, I did it, it was a crime, but ...

- It was the right thing to do
- Solid moral ground will come out on the right side of history
- Fairness outweighs whether behavior meets each element

# Pick Theory of Innocence

- Which of 6 Theories of Defense?
- 1 - 2 paragraphs
- Roadmap for preparation, investigation, motions, witnesses

# Theory of Innocence

- Neutralize or flip bad facts
  - Determine which facts are beyond change
- Be internally consistent
- Define crucial contested facts
- Give the jurors a lens to view the evidence from your perspective

# Theme

- A short phrase that captures the essence of your theory of innocence



# Opening Statement



# Momentum

- Add facts and argument to narrative of Theory of Innocence
- Not just poking at specific points
- Add momentum to arc to lead jury to not guilty verdict

Questions?