

FACT SHEET

Crown witness – Police Officer K. Hamstead

Officer Hamstead has been with the local police force for eight years and has been on the drug squad for the last two years. On June 17th 1988, Hamstead was working at the Main Street Mall in plain clothes. Hamstead noticed two people approaching, one of whom Hamstead recognised as D. Ace, a young person who had been arrested by police several times for drug charges. The officer saw the top of a hand rolled cigarette in Ace's pocket. Hamstead stopped and frisked Ace and discovered a bag of marijuana in Ace's jacket pocket. The drugs were confiscated and placed in an exhibit bag. The officer marked his/her initials and "D. Ace" on the bag for future identification. It seemed to Hamstead that the amount found on Ace was too small to warrant a trafficking charge against Ace. Hamstead offered Ace the deal of not charging him/her in return for information about who had sold Ace the drugs. Ace told Hamstead that s/he had bought the drugs from Robin Jonas who lived at 2405 Barclay Street.

Officer Hamstead then took Ace, with the assistance of another officer to Robin Jonas' apartment. In the car, Ace told Hamstead that s/he thought Robin kept a stash of drugs hidden in the bathroom somewhere. Hamstead left Ace in the car, went to Robin's apartment, searched the bathroom and behind the toilet found a bag with two smaller bags inside it.

One of the smaller bags contained a white powder material later identified by the police lab as cocaine, and the other bag contained a green substance later identified as marijuana. Hamstead placed these in an exhibit bag and marked it "Robin Jonas". There were about two ounces of cocaine and ten ounces of marijuana.

After finding the drugs, Hamstead searched the rest of Robin's apartment and in the kitchen found two boxes of "baggies" similar to the bag, which contained the drugs found on Ace. Hamstead noticed that there were several black lights and black light posters in the apartment and that the furniture was new, modern and expensive looking.

Robin denied knowing anything about the drugs. Hamstead told Robin that s/he was under arrest for trafficking in narcotics. Before Hamstead took Robin out to the car, Hamstead set the other officer out to release Ace so that Robin and Ace would not come into contact.

Officer Hamstead will testify that Robin Jonas offered no resistance to being arrested and that Jonas denied knowledge of the drugs. Hamstead cannot recall whether Jonas seemed very surprised that the drugs had been found in his/her apartment. After Hamstead had finished with Jonas, he went back to the office and drew a floor plan of Jonas' apartment as s/he remembered it.

FACT SHEET

Crown witness #2 – D. Ace

D. Ace is a nineteen-year-old unemployed youth. On Friday June 17th 1988, police searched Ace while s/he was walking down the Main Street Mall. The police found one ounce of marijuana on him/her and told him/her they were going to charge him/her with possession of marijuana. One of the policemen offered Ace a deal. S/he said that they would not charge him/her if s/he told the police where Ace had bought the marijuana. Ace agreed. S/he told the police that s/he had bought it from his/her friend R. Jonas earlier that day. S/he told the police that Brogue lived at 2405 Barclay Street in the west part of town. They would find Jonas' stash if they went there and searched Robin Jonas' bathroom.

The police took him/her with them to Jonas apartment and left him/her in the police car while they searched the apartment. A few minutes later they came out of the building and told Ace s/he was free to go as they had found Jonas drugs. They told him/her that s/he would be required to testify in court. Ace was later interviewed by Crown counsel and told the same story to the Crown s/he had told the police.

Ace was not charged with possession of marijuana. This was a great relief to him/her as s/he had had two previous convictions for possession a couple of years earlier.

Ace had been a good friend of Jonas and had visited him/her frequently. S/he had been visiting Jonas earlier that day when s/he bought the drugs from Jonas. S/he had bought drugs from Jonas quiet often and had been at lots of parties in Jonas apartment at which drugs and alcohol were part of the scene.

NOTE: In a real trial, a police officer is not allowed to testify as to the statements of the accused without the Crown counsel asking the court to hold a trial within a trial. This is called a "voir dire". The voir dire takes place without the jury. The purpose of the voir dire is for the judge to decide if the statements of the accused were made voluntarily, for example, without threats or promise of benefit.

To save time, we have eliminated the voir dire in this mock trial.

FACT SHEET

Defence Witness #1 – Dana Jonas

Dana Jonas is 27 years old. S/he is a high school teacher. One of his/her duties at the high school is as a counsellor for students. In doing that, s/he has seen many students who use drugs, so s/he is very familiar with symptoms of drug use.

S/he and his/her younger brother/sister, Robin Jonas, are very close. Although Robin has been living on his/her own for about a year, Dana still keeps in close contact with Robin. S/he is very sure that Robin does not do any drugs at all. S/he knows that Robin is a very good athlete. S/he and Robin play squash together once a week.

Dana knows that Robin has parties at his/her apartment quite often and that many of Robin's friends smoke marijuana. Although s/he wishes that Robin wouldn't have those parties, s/he hasn't been too worried because Robin has always assured him/her that s/he (Robin) doesn't do any drugs.

Dana knows that Robin works at a part time job at the local supermarket and that s/he lives on a tight budget. That doesn't worry Dana because their parents are well off and help with money whenever the need arises.

Dana was absolutely shocked to hear that Robin had been charged with trafficking in narcotics. S/he is sure that Robin is innocent.

FACT SHEET

Defence witness #2 – Robin Jonas

Robin Jonas is 18 years old. S/he moved away from home about a year ago and lives in his/her own apartment at 2405 Barclay Street. His/her apartment costs about \$400 per month. Robin has furnished the apartment well, bought a stereo, colour TV and other amenities. S/he financed this by working at a local supermarket part – time (about 20 – 25 hours per week). His/her parents have helped finance his/her apartment and have given him/her money whenever s/he needed it.

Robin holds parties at his/her apartment regularly, and s/he knows that many of his/her friends do drugs at these parties, but s/he never does any drugs himself/herself. One of his/her close friends, D. Ace, comes over to Robin's place often and, in fact, visited several times in the week preceding June 17th. There have even been several occasions when D. Ace has stayed over and slept on the couch.

On the morning of June 17th, D. Ace showed up at Robin's place and asked him/her if s/he wanted to go for a walk though Centre Park. Robin's thanked him/her but declined the offer because s/he had things to do that day. S/he remembered that D. Ace went to the washroom. When D. Ace came out of the washroom, s/he left. Robin has never known for sure, but has suspected for some time that D. Ace sells drugs for a living.

On the afternoon of August 3rd, Robin heard a knock on the door. When s/he answered, a policeman who said s/he had grounds to believe that narcotics were on the premises confronted him/her. Robin did not resist even though officer did not have a search warrant. S/he was shocked when the officer came out of the washroom with a bag containing drugs. Robin knew nothing of the drugs. S/he cooperated fully with the police and told them that someone else must have put the drugs in the washroom during one of the parties at the apartment. Robin believes the drugs belong to D. Ace and s/he feels angry that his/her friend set him/her up in order to protect himself/herself. Robin Jonas now feels that D. Ace all along was using him.

INDICTMENT

File Number
327052789

Canada
Province of Ontario
Judicial District of Ottawa - Carleton

HER MAJESTY THE QUEEN

Against

Robin Jonas

INDICTMENT

Name of Accused: Robin Jonas stands charged:

State Offence: Count 1 That, in the city of Ottawa, in the Judicial District of Ottawa - Carleton, Ontario, on or about the 17th day of June 1988 s/he did unlawfully traffic a narcotic, to wit: marijuana, contrary to the provisions of the Narcotic Control Act.

Count 2 That, in the city of Ottawa, in the Judicial District of Ottawa - Carleton, Ontario, on or about the 17th day of June 1988 s/he did unlawfully possess a narcotic, to wit: marijuana, contrary to the provisions of the Narcotic Control Act.

Count 3 That, in the city of Toronto, in the Judicial District of York, Ontario, on or about the 17th day of June 1988 s/he did unlawfully traffic a narcotic, to wit: cocaine, contrary to the provisions of the Narcotic Control Act.

DATED THIS 21st DAY OF August, AT Ottawa, Ontario.



Agent for the Attorney
General of Canada

APPLICABLE LAW

The Narcotic Control Act

In order to convict anyone of a criminal offence, one important thing, which must be shown, is that there is a law, which specifically covers the matter at hand. This page has the relevant sections from the Narcotic Control Act under which is charged.

PART 1 – OFFENCES AND ENFORCEMENT

Particular Offences

Possession of Narcotic – Offence

3. (1) Except as authorized by this Act or regulations, no person shall have a narcotic in his possession.
- (2) Every person who violates subsection (1) is guilty of an indictable offence and is liable
- a) Upon summary conviction for a first offence, to a fine of one thousand dollars or to imprisonment for six months or to both fine and imprisonment, and for a subsequent offence, to a fine of two thousand dollars or to imprisonment for one year or to both fine and imprisonment; or
 - b) Upon conviction on indictment, to imprisonment for seven years.

Section 3 (1) outlaws possession

Section 4 deals with trafficking and possession for the purpose of trafficking.

Trafficking – possession for purpose of trafficking – offence.

4. (1) no person shall traffic in a narcotic or any substance represented or held out by him to be a narcotic.
- (2) No person shall have in his possession any narcotic for the purpose of trafficking.
- (3) Every person who violates subsection (1) or (2) is guilty of an indictable offence and is liable to imprisonment for life.

The Crown is required to prove beyond a reasonable doubt that the accused committed the guilty act, with the required intent. Now that an important element of any case is the offence called “intent”. In other words, in most cases a person is not guilty of an offence if no intention existed to commit the offence. In this case, Robin Jonas cannot be found guilty of possession simply because the drugs were found in his/her apartment. In order to convict, the jury would have to conclude that s/he knew they were there.

Note that the sections 7 and 8 of the Narcotic Control Act (which would reverse the onus of proof in a trafficking charge once possession is established) have been declared inoperative by

the Supreme Court of Canada in Regina vs. Oakes (1986) S.C.R 103 and should be ignored for the purpose of this case.

In conclusion:

- If it can be proven beyond a reasonable doubt that Robin Jonas gave or sold to D. Ace the marijuana found on Ace, then Jonas is guilty of trafficking in a narcotic.
- If it can be proven beyond a reasonable doubt that Jonas was in possession of marijuana and/or cocaine with knowledge of the possession and the intention to give or sell all or part of the drugs to others, then Jonas is guilty of possession of a narcotic for the purpose of trafficking.
- If it can be proven beyond a reasonable doubt that Jonas was in possession of marijuana and/or cocaine with knowledge of the possession, then Jonas is guilty of possession of a narcotic.
- If none of the above can be proven beyond a reasonable doubt then Robin Jonas must be acquitted of each of the charges.

ENTERING EXHIBITS

The Crown counsel will want to introduce exhibits during the trial. In order to do this, the Crown will question the appropriate witness about the exhibit(s) involved. These questions will be asked mainly of Officer Hamstead. For example, when Officer Hamstead says that s/he found drugs on D. Ace, the Crown will ask the Court Clerk to produce the marked bag and then ask Officer Hamstead to identify the drugs:

- Q. Does this bag contain the substance that you found when you searched D. Ace?
A. Yes, these are the drugs I found on D. Ace and I can tell because I initialled them at the time and my initials are still on the bag.

The Crown will refer to the plan of Robin Jonas' apartment.

- Q. Did you draw this floor plan?
A. Yes, I drew the plan when I returned to the officer after leaving the accused's apartment.
Q. Can you indicate where you found the drugs?
A. Yes, they were right (pointing to the bathroom and then describing the location of the drugs.)

Two certificates of analysis will be introduced for the marijuana found on D. Ace and the drugs found in Robin Jonas' apartment.

- Q. Did the crime laboratory give you a certificate of analysis?
A. Yes.
Q. Is this it?

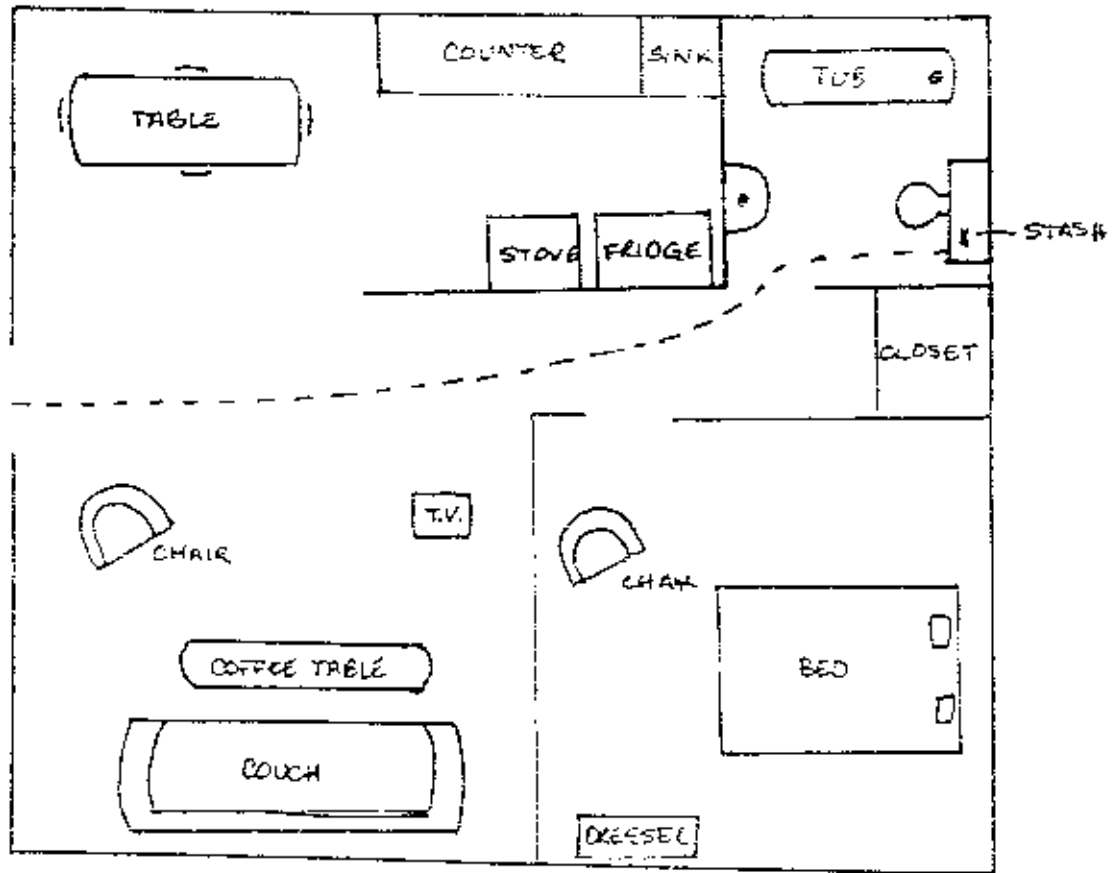
- A. Yes, it is.
Q. What does it say?
A. (Officer will read the appropriate parts).

The Court Clerk will mark and record exhibits for the trial. In this trial there are 8 exhibits.

The exhibits are as follows:

- EXHIBIT A – a bag of marijuana (use tea leaves) found by Hamstead on Ace.
EXHIBIT B – a bag of marijuana (use tea leaves) found by Hamstead found in Robin Jonas' apartment.
EXHIBIT C – a bag of cocaine (use sugar) found by Hamstead in Jonas' apartment.
EXHIBIT D – a Certificate of Analysis (included in kits) of drugs found on Ace.
EXHIBIT E – a Certificate of Analysis (including in kit) of drugs found in Jonas' apartment.
EXHIBIT F – a drawing made by Officer Hamstead of a floor plan (included in kit) of Jonas' apartment.
EXHIBIT G – Two boxes of Baggies found by Hamstead in Jonas' apartment.

EXHIBIT "F"



This is a diagram of Robin Jonas' apartment which Officer Hamstead drew from memory as soon as he/she got back to the police station after arresting Jonas. Hamstead found the bags or drugs taped to the underside of the toilet tank behind the toilet.

Health and Welfare Canada
Health Protection Branch

Santé et Bien - être social Canada
Direction générale de la protection de la santé

CERTIFICATE OF ANALYST

CERTIFICAT D'ANALYSTE

I, **LINDA BARTLET**, being a person on the staff of the Department of National Health and Welfare duly designated as an Analyst under the Food and Drugs Act, and thereby also an Analyst within the meaning of and as defined by the Narcotic Control Act do hereby certify:

That at **OTTAWA** in the Province of **ONTARIO**

On or about the day of **20** day of **JULY 1986**, there was submitted to me

By **DEPOSITORY BOX** by **POLICE CONSTABLE HAMSTEAD**

A member of the **OTTAWA POLICE DEPARTMENT**.

A sealed and unopened package, which bore the following identification marks, initials, or numbers:
C.C. 584 – AB – D. ACE

Je soussigné **LINDA BARTLET**, faisant partie du personnel du ministère de la Santé nationale et du Bien – être social étant dûment nommé analyste en vertu de la Loi des aliments et drogues et par ce fait, agissant aussi à ce titre aux termes de la Loi sur les stupéfiants atteste par les présentes :

Que, a **OTTAWA** dans la Province de **ONTARIO**

Le ou vers le **15** jour de **JUILLET 1986**, il m'a été soumis

Par **DEPOSITORY BOX** par **POLICE CONSTABLE HAMSTEAD**

Membre de **OTTAWA POLICE DEPARTMENT**.

Un paquet scelle et non ouvert qui portait e'estampille, ou les nombres suivants :

C.C. 584 – AB – ROBIN JONAS

That I did open the said package and did remove there from a
Que j'ai ouvert ledit paquet et y ai enlevé

A plastic bag containing a green grass – like substance and some white powder – like substance.

From which I obtained a sample of a substance.
Dont j'ai obtenu un échantillon d'une substance:

That I duly analyzed and examined the said substance and I found it to contain a:
Que j'ai dûment analyse et examine ladite substance et que j'ai constate qu'elle contenait un :
NARCOTIC

Within the meaning of the
Aux termes de la Loi

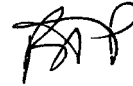
NARCOTIC CONTROL ACT

to wit
A savoir

CANNIABIS (MARIJUANA)

That this certificate is true to the best of my knowledge and skill
Que le présent certificat est fidèle au mieux de mes connaissances et de ma compétence.

Dated at **OTTAWA, ON.** this **20TH** day of **JULY 1986.**
Fait à **OTTAWA, ON.** en ce **20** e jour de **JUILLET 1986.**

A handwritten signature in black ink, appearing to be the initials 'RJD' or similar, written in a cursive style.

Analyst – Department of National Health
Analyste – Ministère de la Santé nationale et du Bien – être social

Health and Welfare Canada
Health Protection Branch

Santé et Bien - être social Canada
Direction générale de la protection de la santé

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Membre de **OTTAWA POLICE DEPARTMENT**.

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C.C. 584 – AB – D. ACE

That I did open the said package and did remove there from a
Que j'ai ouvert ledit paquet et y ai enlevé

A plastic bag containing a green grass – like substance indential in texture and make up to the substance analyzed on Certificate 55531 and concluded to be from the same lot as that sample.

From which I obtained a sample of a substance.
Dont j'ai obtenu un échantillon d'une substance:

That I duly analyzed and examined the said substance and I found it to contain a:
Que j'ai dûment analyse et examine ladite substance et que j'ai constate qu'elle contenait un :

NARCOTIC

Within the meaning of the
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Analyst – Department of National Health
Analyste – Ministère de la Santé nationale et du Bien – être social