

NOTICE TO MOCK TRIAL PARTICIPANTS

The problem in this year's mock trial is a drug trafficking case. These additional instructions are being provided to assist you in dealing with the roles which must be played.

- a. The Crown will call a police officer as an expert witness to assist in establishing that the drugs recovered from the tavern could only have been for the purpose of trafficking. This person is well qualified and the defence may not wish to challenge his/her qualifications. The Crown and defence teams should discuss this point before commencing the mock trial. If the defence insists that the person be qualified, the Crown should lead evidence of the expert's background. Remembering the time limits of the case, do not spend too long on this.
- b. In a real court, the party introducing the expert would call them and lead evidence of their qualifications. The opposing party would then be able to challenge their qualifications. This format will not be used in the mock trial. Instead, each team shall treat questions regarding qualifications as part of their examination in chief or cross-examination.
- c. A drug analysis certificate has been provided as well as a notice to introduce the certificate. It should be introduced as part of the Crown's case. While based on a real certificate, the mock trial certificate is not complete. Do not be concerned with any omissions from it. The certificate is a convenient way for the Crown to prove the substance seized and sent to Health Canada's laboratory for analysis was actually a controlled substance. The Notice to Introduce a certificate is a document which simply tells the accused person that the Crown will be relying on the certificate. This is done to ensure the accused knows the case against him/her and is not taken by surprise at trial. Participants need not be concerned that the substance is not cocaine, but the Crown must introduce the certificate and notice as part of their case.
- d. Participants are to assume that the Canadian Charter of Rights and Freedoms has been complied with.
- e. In keeping with past mock trials, which were trials in the Superior Court and in which the students presenting the cases gowned, we will be assuming that the Crown proceeded by indictment in this matter and the accused elected trial by a Superior Court judge sitting alone (no jury).

GOOD LUCK TO ALL!

INDICTMENT

IN THE SUPERIOR COURT OF JUSTICE

CANADA)	HER MAJESTY THE QUEEN
)	
PROVINCE OF ONTARIO)	against
)	
YOURTOWN REGION)	DIJON LAROCQUE

1. DIJON LAROCQUE stands charged that s/he, on or about the 1st day of October in the year 2004, at the City of Yourtown in the Region of Yourtown, did traffic in a controlled substance, to wit: Coca (Erythroxyton), its preparations, derivatives, alkaloids and salts, to wit: cocaine, contrary to the Controlled Drugs and Substances Act;
2. DIJON LAROCQUE stands further charged that s/he, on or about the 2nd day of October in the year 2004, at the City of Yourtown in the Region of Yourtown, did have in his/her possession a controlled substance for the purpose of trafficking, to wit: Coca (Erythroxyton), its preparations, derivatives, alkaloids and salts, to wit: cocaine, contrary to the Controlled Drugs and Substances Act;

DATED AT YOURTOWN this 5th day of December, 2004.

.....
Agent for the Attorney General of Canada

R. v. DIJON LAROCQUE

CONSTABLE CHRIS SNOWCHILD

Description of Witness

Constable Snowchild is employed by the Yourtown Police Service and has been for the past eight years. S/he holds the rank of Constable first class. During this time, s/he has been involved in general policing duties. One year ago, s/he was assigned to the Yourtown Police Drug Squad and has often worked as an undercover officer purchasing illicit drugs. Officer Snowchild has cultivated a series of contacts in the drug underworld who have at times provided information to the officer regarding drug traffickers. It has been twice alleged that Snowchild made false reports to Justices of the Peace in order to obtain search warrants. It has been alleged that s/he claimed that a confidential informant gave Snowchild information when no such informant existed. These rumours have not been substantiated and Snowchild faced no discipline as a result of these allegations. Nonetheless, Snowchild was suspended with pay while the allegations were investigated.

Statement of the Witness

On September 18, 2004, I received information from a confidential informant that a paroled convict named Fredi Friedbrain was selling drugs, specifically crack cocaine, out of a sports bar known as "Cookie's". Friedbrain was not known to me at that time, although I did check police files and found that s/he had been convicted of selling drugs on several occasions and had recently been paroled for that offence. I was also able to obtain a mug shot of him/her. The police file indicated that s/he had a significant cocaine addiction.

I was not able to attend at the sports bar for almost two weeks due to other duties and a course I was taking. Since I had received this information from an informant I knew, I thought that I should handle the matter myself (although cases will be assigned to other officers as directed by the Sergeant in charge). As this informant was not paid for this information, I did not file any reports on receiving the information, although some officers will inform a superior officer of any contacts with an informant. I acknowledge that it would have been better had I told my sergeant of this.

I went to the bar on the evening of October 1st. I was dressed in old clothes. I sat down and as part of my cover I ordered a beer. I waited about ten minutes and then someone who matched Friedbrain's description came in. S/he went to the pool table and did something with one of the pool table pockets, but I could not see what it was. S/he then put a loonie on the edge of the table to show that s/he wanted it for the next game and sat at a corner table. I went over to the pool cues and struck up a conversation, which I recall as follows:

ME: I hear you can help me. I'm lookin'.

FRIEDBRAIN: Get lost. I don't know you.

ME: Come on. I need something. I only got twenty.

At that point, the now accused came over to Friedbrain's table and said something like "how's business tonight"? Friedbrain said "okay". The accused gave Fredi a beer and left. Friedbrain then handed me a small, whitish pebble for which I paid the twenty dollars. I went back to my beer.

Just before I left, I saw Friedbrain walk over to the bar owner and give him/her some money. I did not see Friedbrain purchase anything at that time. They seemed to be speaking in a friendly manner. I did not see Friedbrain give the owner anything else nor did the owner give Friedbrain anything else.

I left and came back about two hours later. I asked the owner if Fredi was around. S/he said s/he didn't see him/her. I asked if s/he knew if Fredi would be back and was told s/he did not know. The owner said "Fredi just comes and goes. S/he seems to hang at the table sometimes. S/he is pretty pathetic, I hear that s/he used to be a crackhead. As long as s/he doesn't bother anyone, I let him/her hang."

I left and reported back to my sergeant that I had made a successful drug purchase and suspected that there may be additional drugs on the premises. I sent the pebble I had bought to the Health Canada drug lab for testing.

The next day I was part of a team of officers which executed a search warrant. I did not see Friedbrain then but understand that other officers found drugs in a pool table pocket. The owner of the bar was arrested by them.

I served the accused with a certificate of analysis in November, 2004.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Crown before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the Crown to identify certain exhibits. The Crown must prove that the item in court is the same as the item which was sold to the undercover officer.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major

inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

CONSTABLE MORGAN BLOWBERG

Description of the Witness

Officer Blowberg has been a member of the Yourtown Police Service for just over ten years and holds the rank of Senior Police Constable. S/he has recently returned to uniform duties. Before that, s/he spent five years in the Yourtown Police Drug Squad. In that capacity, s/he has been involved in well over one hundred drug investigations, involving many different drugs. S/he has purchased cocaine as an undercover officer on at least thirty occasions. Officer Blowberg has never been qualified as an expert witness in a court case before, but the Crown will attempt to do so now. This officer has recently completed a specialist course in drug trafficking given by the Police Department.

Statement of the Witness

On October 2, 2004, I was part of a search warrant execution team. We were assigned to search a bar called "Cookie's" which is located in Yourtown. I was specifically told that there was a possibility that drugs would be found on the premises. We were to watch for a known trafficker named Fredi Friedbrain and for the bar owner Dijon Larocque.

A team of six officers entered the bar at approximately two p.m. The bar was not crowded, but a couple of people were playing pool. We secured the premises and ordered all person to remain, but in one area so that they would not interfere with our search nor have the chance to destroy any evidence. I went to the pool table.

The owner came over to me and asked what was going on. I showed him/her a copy of the warrant. He did not try to interfere in any way with the search but asked "what are you guys doing here? What is going on?"

I then searched the pool table pockets and from under the lining of one of them (it would not have been easily seen just by looking at the table) pulled a small plastic baggie in which I saw a rock like substance which I believed to be crack form cocaine. I held it up and showed it to the owner. S/he asked "what's that". I said "ask your pal, Fredi". The owner seemed upset and said "I should kill that S.O.B."

I arrested the owner for possession of cocaine for the purpose of trafficking. I also sent the drug seized to the Health Canada laboratory for analysis. I weighed it before doing so and it was 7.5 grams.

Based on my experience as an undercover officer and drug investigator, it is my view that anyone who had this much crack form cocaine must have had it for trafficking. The presence of debt lists, scales and other materials, such as small baggies to be used in selling the drug in small amounts, would solidify my opinion, but the lack of these items does not change my view. There was simply too much of the drug to be for personal use, even over a long time. As well, a

trafficker will often have a drug stash where s/he keeps a supply of drugs. This is done so that if the trafficker is arrested, s/he will only have a small quantity if any at all on his/her person. This means that they would avoid prosecution or only be prosecuted for possession. A trafficker will keep control over the stash or keep it in a safe place. If it is left with someone else, then that other person will have to be trusted by the trafficker or be a part of the trafficker's plan. A trafficker will not trust many people with his/her stash; it is too valuable and there really is no honour amongst drug dealers.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Crown before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the Crown to identify certain exhibits. The Crown must prove that the item in court is the same as the item which was seized by the police. In your case, the Crown will seek to qualify you as an expert witness in order to prove that the accused had the drugs for the purpose of trafficking. As an expert, you can give an opinion if properly qualified. If you are not accepted as an expert, you cannot give an opinion. Therefore, the Crown will have to prove that, on balance, you have special knowledge which the ordinary person does not have and which is necessary to help the court decide this case properly.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility and expertise are central to this case.

DIJON LAROCQUE

Description of the Witness

Dijon Larocque is the owner of “Cookie’s Sports Bar”. S/he is fifty seven and until a year ago was an investment banker. When Megabank merged with Metrobank, several senior executives became redundant. Larocque as given a retirement package and decided to do something totally different in his/her retirement.

Statement of the Witness

My name is Dijon Larocque. Until a year or so ago, I was an investment banker. Due to industry mergers, my position was eliminated. However, I received a generous severance package and decided to retire. I spent some six months travelling with my spouse, but wanted to do something. I decided I did not want to get back into the rat race of banking and all that entailed, so I thought about doing something completely different. That is when I came upon the idea of a sports bar. It would be a fun thing to do, I could set my own hours and I figured that everyone could have a good time there, watching the games and so on.

I contacted a former business colleague who knew of a bankruptcy sale of a sports bar. It was a perfect opportunity, I would be able to step into a place with a staff and just start up. We have seven employees at the bar and various people will work various shifts. I started it off with a Leafs appreciation night. I even sent flyers for that to the local police division. We have officers in all the time since cops and firefighters always are given free coffee.

I remember the days that this happened. I recall everything because I was arrested. That was a shock. The day before I was arrested, I recall a person looking for Fredi Friedbrain. I now know the person was a police officer, but I thought at the time s/he was a social worker or something. Fredi seems to be a pretty messed up person and as far as I had heard used to have a cocaine addiction. I never saw Fredi doing anything wrong at the bar. If I had, I would have thrown him/her out. I know Fredi liked to play pool and hung around the pool table. S/he would come in, have a few beers, play pool and leave. A few people would come by and talk to Fredi, but it seemed to be just “hi, how are you” type conversations.

Fredi would always pay for his/her beer each night and never asked for credit. I sometimes would bring him/her a beer since s/he always drank the same thing. I would chat with him/her, mostly about sports. I don’t recall ever asking him/her “how’s business” but I could have. I was in banking for years, to me that is just another way of saying “how are you?”

The next day, that is the day I was arrested, I opened the bar at noon. My manager was in as well. The manager always thought there was something wrong with Fredi, but s/he thinks that about everyone. I was just serving some customers when a group of cops came in. They were all in uniform. They started tearing the place apart and I went up to one of them to ask what was going on. S/he told me to mind my own business and not interfere or I would be arrested for

obstructing police. I told him/her it was my business, I was the owner. Then s/he went to the pool table and rummaged around. I was shown something that looked like plaster. I asked what it was.

The cop told me to ask Fredi. Then it all hit me. The manager had been right and Fredi was using the bar to traffick. If s/he had been there, I would have broken his/her neck.

I never knew Fredi was trafficking or left anything in the bar.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the defence before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

Description of Witness

Mieki Smackman is the manager of Cookie's Sports Bar. S/he was with the company when it went bankrupt under the previous ownership. There was a bankruptcy sale and when new management came in, the entire staff was kept on. S/he is forty five and married with no children.

Statement of the Witness

I am the manager of Cookie's Sports Bar. I had the same position under the previous ownership. The bar went belly up and I was looking for a job. I heard that it was going to be sold in a bankruptcy sale and the new owner wanted to keep all the staff. I thought that was great.

The old ownership was a mess. I think they let in too many undesirables. I think the bar went bankrupt because the former owner likely put all the profits up his nose. I was determined to make sure this would not happen again. I am getting a bit older and it is not easy for me to find a job. I'm not twenty anymore.

I met Dijon, the new owner and let him/her know about some of the problems in the bar under the last group. S/he told me to watch things and if there were problems, look after them. S/he also said if we get some cops in here occasionally, that should discourage anything wrong. So, s/he came up with the idea of free coffee for cops and firefighters.

I don't like to blacklist anyone, but I never liked Fredi Friedbrain. There was something about him/her, but I could not say for sure. I told the boss, Dijon, about my suspicions but s/he just said that Fredi was pathetic and as long as s/he did not cause trouble, let him/her alone.

Then I watched Fredi more. I figured that Fredi was dealing. S/he was acting like some of the people around the old boss. Things would happen like people would come in and look for Fredi, leave quickly, and they always seemed to be looking around to see if anyone was watching. Fredi would go to the pool table for no reason. Something had to be up. I told Dijon this, but s/he said "how do we prove it?" S/he also said s/he did not want trouble and we could not ban someone on suspicions. If we did that they would file a Human Rights complaint and s/he would have to spend a fortune on lawyers trying to defend it.

Dijon kept saying over and over if Fredi or anyone else did something wrong, we would ban them, but we needed some proof. I suggested that we try to buy something from Fredi. Dijon looked at me like I had two heads. S/he said "are you crazy; I don't want any part of that stuff. Where's a cop when you need one?"

I made an anonymous call to Crime Stoppers and told them about my suspicions. I never met anyone, but the operator said they would have a cop look into it. The next thing I knew, Dijon was arrested. I could not believe it. I still can't believe s/he had anything to do with Fredi.

I remember telling the cops at the time that they must be making some mistake. The cop who arrested Dijon said “No mistake pal”. I tried to tell them the whole story about Fredi, but that cop said “save it for the judge”.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the defence before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

RELEVANT LAW

The Controlled Drugs and Substances Act has several schedules dealing with drugs. Cocaine is a Schedule I drug.

S. 4(1) of the CDSA states:

Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II, or III.

S. 5(2) of the CDSA states:

No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, of IV.

“Traffic” includes the selling, administering, giving, transferring , transporting, sending or delivering of a substance

Some provisions of the Criminal Code apply to CDSA prosecutions.

S. 4(3) provides:

- a) a person has anything in possession when he has it in his personal possession or knowingly:
 - i) has it in the actual possession of custody of another person, or
 - ii) has it in any place, whether that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

S. 21 provides that a person may be a party to an offence.

S. 21 (1) Every one is a party to an offence who

- a) actually commits it;
- b) does or omits to do anything for the purpose of aiding any person to commit it; or
- c) abets any person in committing it.

S. 21 (2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

LEGAL PRINCIPLES

A judge may accept all, some or none of the evidence of any witness.

In order to prove Larocque guilty of the offence of trafficking, the Crown must show that s/he and Friedbrain acted together in order to sell a drug to an undercover officer.

In order to prove Larocque guilty of the offence of possession for the purpose of trafficking, the Crown must show that s/he knew of the drugs in the pool table and intended them to be sold, or was wilfully blind to the presence of the drugs and Fredi's actions. Wilful blindness is a state of mind which arises where a person has become aware of the need for some inquiry but declines to make an inquiry because s/he would prefer not to know the truth or to remain ignorant. It is not enough that Larocque be reckless as to the presence of drugs and Fredi's actions. Recklessness is a state of mind which arises when a person becomes aware of a risk that something prohibited will occur, but persists in a course of action which brings about the very thing which is prohibited.

The standard of proof in any criminal case is beyond a reasonable doubt, which is much closer to absolute certainty than to the balance of probabilities. However, each piece of evidence need not be proven to this standard. Only the final result must be so proven.

CERTIFICATE OF ANALYSIS

I, Scienta Analista, have been designated by the Solicitor General of Canada as an analyst pursuant to the Controlled Drugs and Substances Act;

I carry out my duties as an analyst at the Health Canada Drug Laboratory in Yourtown, Ontario.

On November 1st, 2004 I received by secure courier from the Yourtown Police Department, Officer Chris Snowchild, a substance.

I analyzed this substance and found it to be a controlled substance, to wit: cocaine.

On November 1, 2004, I received by secure courier from the Yourtown Police Department, Officer Morgan Blowberg, a substance.

I analyzed this substance and found it to be a controlled substance, to wit: cocaine.

Dated this 3rd day of November 2004 at Yourtown, Ontario

Scienta Analista

NOTICE OF INTENTION TO INTRODUCE A CERTIFICATE OF ANALYSIS

HER MAJESTY THE QUEEN

- v -

DIJON LAROCQUE

TAKE NOTICE that at the trial or preliminary inquiry of the accused, the Crown/Prosecution intends to introduce a certificate of analysis of an analyst prepared pursuant to the Controlled Drugs and Substances Act.

Dated at Yourtown this 5th day of November, 2004

Served on the Accused by: Officer Chris Snowchild

Chris Snowchild