

**IN THE SUPERIOR COURT OF JUSTICE**

CANADA	)	HER MAJESTY THE QUEEN
	)	
PROVINCE OF ONTARIO	)	against
	)	
YOURTOWN REGION	)	MARCEL(LE) LECOUSTEAU

1. MARCEL(LE) LECOUSTEAU stands charged that s/he, on or about the 1<sup>st</sup> day of October in the year 2005, at the City of Yourtown in the Region of Yourtown, did use a weapon, to wit: an exacto knife, in committing an assault upon Bulk Bogus, contrary to the Criminal Code;
2. MARCEL(LE) LECOUSTEAU stands further charged that s/he, on or about the 1<sup>st</sup> day of October in the year 2005, at the City of Yourtown in the Region of Yourtown, did have in his/her possession a weapon, to wit: an exacto knife, for a purpose dangerous to the public peace, contrary to the Criminal Code;

DATED AT YOURTOWN this 5<sup>th</sup> day of December, 2005.

.....  
Assistant Crown Attorney and  
Agent for the Attorney General of Ontario



## **R. v. MARCEL(LE) LECOUSTEAU**

### **Description of Witness**

Bulk Bogus is a student at the University of Yourtown, studying physical and health education. S/he is also a member of the Greco-Roman wrestling team and in excellent physical condition. In order to pay his/her way through school, Bulk was working as a door attendant/bouncer at the Nitrogen Night Club. Bogus has no criminal record but it was alleged on another occasion, s/he used excessive force against a drunken patron of the club, by hitting that patron when he had been subdued by other security personnel. Bogus has always denied this.

### **Anticipated evidence of the Witness**

I was working the evening shift at the Nitrogen Night Club on October 1<sup>st</sup>. It was a fairly quiet night until the time the band started. Trouble always follows this band around. They are called "Dogface" and none of the security people like them, but the manager keeps booking them because they bring in the crowds. So, I was extra vigilant that night. As usual, I had not had anything to drink for 24 hours before going on duty. I had a baton which was standard issue, but it is kept in my pocket unless a real emergency arises. Sometimes security personnel work in pairs, just in case things get rough. It is less likely that some one will try to start anything with two people as opposed to one. I was assigned to watch matters from the first balcony that night. It gives you a good view of the crowd and you can radio down to let other security officers know if there is a trouble spot. In fact, I had just done that before this incident.

I finished that call and saw one person who was trying to get up onto the stage. S/he looked completely wasted. I did not see any other security in the area, so I decided to get down there myself. It only took a few seconds to get down to the area and a few more to get to the stage. I immediately went up behind the person now known to me as Marcel(le) Lecouteau, the accused. I took them by the back of the collar with my left hand and the right arm with my right hand. I said, "Okay Mac, you have had a bit too much. Let's hit the road". The accused said "How did you know my name? Don't push me! I didn't do anything! Let me go, jerk!"

I was able to get the accused to the front door and down the stairs. I remember telling him/her just to take it easy, there was no point in getting upset. S/he as getting madder by the second. So, I gave him/her a little push to send him/her off in the direction of the bus. It was not hard, just a bit of a nudge. I should have been a bit more careful, in hindsight. This person started

walking into the street and I could see that a bus was coming. It was a full 100 yards or so away, but with the patron's drinking, I thought I better grab him/her and guide them back. I yelled out to them to watch out and started to run toward them.

All of a sudden, this person swings around, has an exacto in his/her hand and starts yelling at me. It was a lot of swearing, but I cannot remember the exact words. I think it may have been something like a challenge and that s/he would take me on and cut me. I was just trying to tell him/her about the bus and took another step, then s/he swung the blade at me. I jumped back. There was no way I was going to get cut by some stupid drunk.

I then yelled "knife" in case there were other security people around. Fortunately, there was a police officer who I heard yell "police". Then the accused took off and ran to some other person on the street. The officer pursued but I could not see anything as it was out of my line of sight. A fair sized crowd had gathered and that was blocking my view.

I did not suffer any physical injuries, but I was pretty shaken up. The boss gave me a couple of days off.

I later saw the accused in the back of a police cruiser and I know it is the same person that is before the court.

I will come to court to testify.

## **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.

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 reliability are central to this case.

A witness may be in a position to observe carefully, but this is not always the case, Many factors, such as stress, will cause a person to misconstrue something. Or, even the most honest witness can make a mistake.

## **R. v. MARCEL(LE) LECOUSTEAU**

### **Description of Witness**

Morgan Freshface is a member of the Yourtown Police Service holding the rank of Constable, first class. S/he has been a police officer for five years and has worked in uniform at all times. Officer Freshface has received the usual training that any officer does at the Police College in Aylmer, but has not taken any further courses. All his/her further training has been on the street with other officers. This officer has received a citation for bravery for rescuing a baby who had fallen into the alligator pit at the Yourtown Zoo.

### **Anticipated evidence of the Witness**

On October 1, 2005, I was assigned to a security detail outside the Nitrogen Night Club. We were aware that a band called "Dogface" was going to be playing there later in the evening. My commanding officer, Sergeant Flatfoot, ordered that several extra officers be on patrol in the area, in addition to the club security and paid duty officers. That band always attracts trouble. I know that people who live near the club as well as my superior officers have asked the management of the club not to book that band, but these guys just won't listen. As long as its legal, we have to protect their right to book those guys.

I was outside the club when I heard someone yell "knife". I turned and I saw a smaller person, who looked pretty upset, (whether s/he was scared, upset or angry I could not tell exactly), holding a large exacto knife up toward a bouncer from the club. The person with the knife was mouthing some words, but in all the noise from the people on the street, I could not make out just what they were saying. The bouncer was larger than the person with the knife. I was about ten yards behind the bouncer, so I could not see his/her face, but they are all readily identifiable as they wear black T-shirts with "NITROGEN STAFF" on the front and back.

I yelled "police, drop the knife" and the person turned and ran. I gave pursuit and tackled the person. I quickly handcuffed him/her. I also seized a yellow handled exacto knife which was near him/her. The knife had fallen from his/her hand when I tackled the suspect.

When I had the person on the ground, s/he said "don't hit me, don't hit me". I told them I was a police officer and would not hurt him/her. The suspect said "I thought you were that

bouncer and were going to hit me again”. The suspect was quite drunk and seemed very confused. I was in full uniform and it took him/her some time to realize that I was a police officer.

I gave the suspect his/her Charter rights and called over my police radio for a scout car to transport them to the station. It only took a minute for the car to come and I put the suspect in the back of the car. As other officers were about to leave the area and take him/her to the station, I saw the bouncer come up to the car and say “that’s the scumbag who tried to knife me”. The bouncer was upset and was swearing at the suspect. I told him/her to calm down, everything was under control. S/he cooled down a bit then, but was still pretty angry.

I took the bouncer’s statement and relayed it to the officer in charge of the station. I also took the exacto knife to the property repository and placed it in my evidence locker where it remained untouched until needed for court. I can confirm that this is the only exacto knife I seized that night and that I put my badge number on it for ready identification.

Upon being notified, I will attend court.

## **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 from the accused.

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.

## **R. v. MARCEL(LE) LECOUSTEAU**

### **Description of Witness**

Marcel(le) Lecouteau, the accused in this case, is 23 years old. S/he has a grade 12 education and has worked at a variety of jobs as a labourer since then. Two years ago, s/he started working for Barking Pumpkin Drywallers. S/he is well regarded by the management and has shown no signs of difficulty. Marcel(le) does have a criminal record. As an 18 year old, s/he was found guilty of threatening to cause a butcher serious bodily harm. As a twenty year old, s/he assaulted a baker. A separate charge of assaulting a candle stick maker was withdrawn then. On both occasions, the judge imposed a fine upon Marcel(le).

### **Anticipated evidence of the Witness**

I work as a drywaller and have been doing this work for a couple of years. It is pretty satisfying and puts a regular pay cheque in my wallet. It can be pretty physical and I am not by any means the biggest person around, but if the work is too heavy, I can always get help from one of the other people at the plant or on site if we are working at someone's home. I use the exacto knife to cut drywall or to cut open boxes of materials we get in. I know that I should leave it at work, but this time I forgot. I did not think anything of it.

On October 1<sup>st</sup>, I remember reading in the paper that "Dogface" was going to be playing at the Nitrogen night club that night. I told my buddy and we decided we should head down. We got there about eight and went in for a few beers. I guess I had about six or seven before the band started. I went up to the bar and got one more then was going back to my table. I had to pass by the stage and saw another person I knew. So, I put my beer down on the stage and was going to chat with him/her when out of nowhere I was grabbed. I heard my name, Mac is my nickname, and thought that a pal was playing a bit of a joke. Then this bouncer started pushing me and I realized it was no joke. I had not done anything and was asking what was going on. The bouncer just kept pushing and threw me out the door.

I almost fell down the stairs. I wanted to go back and ask the manager what was going on but the bouncer was in the door. S/he was the size of a gorilla and I figured that I did not need any hassle. I decided to walk across the street when I heard someone running after me. I turned and it was the bouncer. I thought I was going to be attacked. I was pretty drunk, but I wasn't causing trouble and did not deserve to be beaten up. So, I was going to run but I realized I had my exacto from work. I pulled it out and held it up. I did not swing it. I told the bouncer to get back. The

blade was still in, in fact you need two hands to open it and I was too drunk to be that coordinated. The bouncer stopped.

Then I heard someone yell drop the knife. I thought that the rest of the bouncers from the club were going to attack me, so I just ran. I was tackled and told the person not to hit me. It turned out it was a cop. I thought that was lucky since I knew the bouncer would have beaten me if s/he caught me.

I tried to tell the cop about the bouncer, but the cop just told me to chill and started reading me some legal stuff I did not understand. Maybe I did not understand it because I had been drinking.

I was put in the police car and the bouncer was still after my head. I think a cop had to hold him/her back.

I spent the night in jail and was released the next day.

I do have a record. One was threatening a butcher. He had a bunch of live geese in his shop and I told him he should get the axe instead of them. I don't think it is right for people to eat animals. I'm vegetarian. Then another time I punched a baker because he was pushing some sort of meat tart in my face. I was pretty drunk both times. I should not have done those things, but this time I really felt like I was going to be beaten up for nothing. I had to defend myself.

## **Helpful Suggestions**

In order to carry out your role successfully, you will have to meet with the defence counsel 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.

Since you are the accused person, you are in a special position and special rules of evidence apply to you. For example, the Crown cannot attack your character unless you choose to put in into issue in this case. Similarly, the Crown cannot ask you about the facts underlying your prior convictions, but may ask you about the conviction and sentence you received. The defence may ask you about the background facts of the convictions if the defence feels it is helpful to their strategy in this case.

In regard to Marcel(le)'s criminal record, the defence need not lead this as part of their case, but may choose to do so in order to lessen the effect of the Crown bringing it out in cross-examination.

## **R. v. MARCEL(LE) LECOUSTEAU**

### **Description of Witness**

Chris Muchbiere is Marcel(le) Lecouteau's co-worker. S/he has no criminal record and has a high school education. S/he met Marcel(le) when Marcel(le) started working for Barking Pumpkin Drywall. They became friends and will sometimes socialize together. Muchbiere is a big fan of the band "Dogface" and has purchased their records or CD's as well as seeing them in concert on a couple of occasions.

### **Anticipated evidence of the Witness**

My name is Chris Muchbiere. I am twenty-five years old and have a high school education. I met Marcel(le) a couple of years ago when s/he began to work at the drywall place. I have been there four years. Marcel(le) is a good worker but not terribly strong. Often s/he will ask for some help with moving drywall or some of the large boxes of supplies that come in. Other times s/he will get a cart to do that. This can happen on job sites or at the plant.

We all have exacto knives or box cutter knives to cut the drywall or the boxes. We are supposed to leave them at work, but often we don't. It is just one of those things. You have the knife in your pocket and walk out the door. I have done it myself a few times. Nonetheless, it is a fair sized knife so you should not forget that you have it.

I remember October 1<sup>st</sup> because Marcel(le) came and told me that "Dogface" was playing at the Nitrogen club that night. They are a great band and were going to be playing some cuts from "Bark at the Postman", their latest album. So, we decided to grab a few beers and go see them.

We got there about 8:00 or so, I guess. I was not paying attention, really. We had probably had four to six beers by the time the band started. Marcel(le) went to grab another brew and I saw him/her by the stage. The crowd was hard to get through, but I was trying to tell him/her to grab a beer for me as well. I think that s/he was talking to someone and put his/her glass on the stage but it may have spilled. I'm guessing about it spilling because the next thing I saw was a bouncer going up to Marcel(le). I figured if the bouncer was going over it was to tell him/her to keep the stage area clear.

Anyways, the next thing I saw was the bouncer grab Mac (that's what we call Marcel(le) and push him/her to the door. Mac was not doing anything. It was like the bouncer was playing with a rag doll. That bouncer was acting like someone from a Swartzenegger movie. I tried to get over to see what was going on but another bouncer cut me off and told me to stay out of it, it was not my beef. I tried to get over but the second bouncer said to chill out or he would put me out.

I went around and got out the front door. I saw Mac being pushed down the stairs and he sort of stumble into the street. Then the bouncer who grabbed him went after him. I was going to jump in but I was grabbed from behind and put up against a wall by another bouncer. I did not see what occurred after that.

Both Mac and I were feeling no pain, but not causing any trouble.

A cop came over and asked the bouncer who had me what was going on. That bouncer said he was just making sure I didn't cause trouble. I guess the cop wasn't too impressed because he told the bouncer to let me go and get back into the club. Then he told me that I should get home or he would have to arrest me for being drunk in a public place. I tried to tell him about Mac but he told me home or jail were my choices. So, I went home.

I got a call from Mac the next day and a few days later I met with his lawyer and told the lawyer what happened. Mac and I discussed the case, but I can't recall what he said. Anyways, that was before I met with the lawyer, who told me just to say what I recalled and tell the total truth. I am sure that what I am stating is all from my own recollection.

### **Helpful Suggestions**

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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 reliability are central to this case.

A witness personal relationship with a person may make some believe that the witness is willing to lie in order to protect someone. The people hearing your testimony must be convinced that you are telling the truth, despite being a friend of the accused.

## **NOTICE TO MOCK TRIAL PARTICIPANTS**

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

1. The Crown will call the bouncer who was allegedly assaulted by the accused person. The actions of the bouncer are important to the defence in determining if a defence of self defence can be maintained. Under Canadian law, a person may defend themselves against an actual or perceived assault, but cannot use force which is out of all proportion to the real or anticipated assault. Relevant portions of the Criminal Code have been reproduced for the assistance of the participants.
2. The participants should be aware of the state of mind of the accused in putting forward a defence of self defence. The law recognizes that an accused person may be mistaken in what they believe is occurring before they defend themselves. However, the more unreasonable their belief, that is the farther away it is from other known facts or what is objectively accepted, the less likely it is that a person honestly believed what they are claiming.
3. Self defence is a very complex area of the law and often gives lawyers and judges much difficulty. Student participants are not expected to have a full knowledge of this area.
4. In order to determine if a person possessed a weapon for a purpose dangerous to the public peace, one has to look to the intention of the person using the weapon prior to its use, not only at what is done with the weapon.
5. The definition of weapon in the Criminal Code is also reproduced below.
6. Participants are to assume that the Canadian Charter of Rights and Freedoms has been complied with.
7. 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).
8. A judge may accept all, some or none of the evidence of any witness.

9. 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.

GOOD LUCK TO ALL !

## RELEVANT LAW

### CRIMINAL CODE PROVISIONS

#### S. 2 Weapon defined:

“weapon” means any thing used, designed or intended for use

- a) in causing death or injury to any person; or
- b) for the purpose of threatening or intimidating any person.

S. 88(1) Every person commits an offence who carries or possesses a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.

S. 265 (1)(b) A person commits an assault when he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose.

S. 267(1)(a) Every one who, in committing an assault, carries, uses or threatens to use a weapon or an imitation thereof, is guilty of an offence.

S. 34(1) Every one who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.

37(1) Every one is justified in using force to defend himself or any one under his protection from assault if he uses no more force than is necessary to prevent the assault or the repetition of it.

