

IN THE SUPERIOR COURT OF JUSTICE

CANADA)	HER MAJESTY THE QUEEN
)	
PROVINCE OF ONTARIO)	against
)	
YOURTOWN REGION)	ARI THROXALON

1. Ari Throxalon stands charged that s/he, on or about the 1st day of July in the year 2007, at the City of Yourtown in the Region of Yourtown, did unlawfully import into Canada a substance included in Schedule I, to wit: cocaine, contrary to Section 6 of the Controlled Drugs and Substances Act;
2. And stands further charged that s/he, on or about the 1st day of July in the year 2007, at the City of Yourtown in the Region of Yourtown, did unlawfully have in his/her possession a substance included in Schedule I, to wit: cocaine, for the purpose of trafficking, contrary to Section 5 of the Controlled Drugs and Substances Act;

DATED AT YOURTOWN this 5th day of December, 2007.

Agent for the Attorney General of Canada

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Description of Witness

Georgie Harrisongs is a customs inspector with the Canadian Border Service. S/he is forty-five. Harrisongs has been with Canada Customs for twenty years. On July 1, 2007, s/he was working at Pearson International Airport. As this was Canada Day, the airport was short staffed, so many inspectors had to do a double shift. A flight from Bogota, Colombia was arriving at the terminal and as Colombia was a source country for drug shipments, Harrisongs and other inspectors were on high alert for possible drug importation. Every person on the flight was going to be subjected to special scrutiny, unless there was good reason to believe that they were not involved in any illegal activity.

Anticipated evidence of the Witness

My name is Georgie Harrisongs. I am an inspector with the Canadian Border Service and have held various positions with customs for twenty years. On July 1, 2007, I was doing a double shift at Pearson International Airport. It was Canada Day so many staff had the day off. A flight was arriving from Colombia and since I know that Colombia is a source country for drugs, especially cocaine, I decided that I and my staff were going to have to pay special attention to that flight. There were going to be delays since we were short staffed and we were going to check everyone on that flight. You never know who might be bringing drugs into the country.

I met the accused in the primary inspection line. This is where people are given a short interview and then it is determined if they will go to a secondary inspection. Usually, we have different people performing these tasks, but since we were doubling up on the holiday I did both duties. I asked where s/he was coming from and was told Colombia. I asked why s/he went down there and s/he said it was for a vacation. This made me a bit suspicious. I asked him/her about his/her family background and was told married with two kids, both teenagers, but that the family did not come on this vacation. S/he was travelling alone. I was also told that s/he was an independent agent for an import/export company. Then s/he told me that her/his boss was someone named Jamie Bond. This sounded like James Bond to me, the sort of thing you would expect someone to make up on the spot if they did not have their cover story straight, and I

determined that this person was a liar and likely to be importing something. I took him/her to secondary and conducted a thorough inspection of baggage. There were three large bottles of liquor in the luggage. The accused acknowledged that s/he purchased them in Colombia and was very rude to me, as if s/he wanted to get away from the inspection. I looked at the bottles and there was a clear and obvious trickle of a substance near the neck of one of them. I conducted a NIK (Narcotic Identification Kit) test on the bottle and determined that it contained cocaine.

I immediately arrested the accused. S/he was muttering a lot, but I do recall him/her saying “why” and some other things. I took the accused into custody and maintained control of the bottles until they were turned over to Officer Do-right of the RCMP airport detachment. I asked for Do-right as I knew s/he was well versed in narcotic prosecutions and had been qualified as an expert witness in cases. If there was anything more to be done, this officer would know what to do.

I reported back to my duty desk and continued working on other matters.

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.

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Description of Witness

Devinney (Dudley) Do-Right is a member of the RCMP Pearson Airport Detachment holding the rank of Constable First Class. S/he has been a police officer for twenty-five years and has worked the airport for the past ten years. In that capacity, Officer Do-Right has conducted hundreds of narcotic investigations. S/he has been qualified as an expert in importation, drug trafficking, and related matters and has testified as an expert witness in these areas on at least twenty occasions.

Anticipated evidence of the Witness

My name is Devinney Do-Right. I am with the RCMP and have been an officer for twenty-five years. My nickname is Dudley and I get a lot of teasing about that due to that old cartoon. On July 1, 2007, I was working at Pearson airport and received a call from Inspector Georgie Harrisongs saying that s/he had arrested a person for importing cocaine. As is usual practice in such matters, I went to the customs desk and then to the detention area which is closed to the public. There I met the inspector and the accused. I asked the inspector for a report which was given to me. It was basically that the accused had brought in these bottles, was very uncooperative with the customs people, and gave a cover story to appear respectable. The inspector told me what the accused said. S/he tried to interrupt the customs inspector several times saying that what the inspector was saying was not true and s/he did not say that. The accused was pretty upset, more angry than anything. I told him/her to calm down.

I asked the inspector to leave and s/he did so. I inspected the bottles and could not see anything obviously wrong with them. For safety and to preserve evidence, I sealed the bottles in

evidence bags. I left the accused in the detention room (the door is locked and cannot be opened from the inside) and took steps to send the bottles to Health Canada for analysis. This is also standard procedure. I later received a certificate from Health Canada indicating that the substance in the bottles was cocaine.

I am familiar with methods of importing drugs and one of the most common is in bottles like occurred here. The cocaine is easily recovered from the liquid form and can be refined further. The three bottles each contained 1.5 litres of liquid in which there was a strong amount of cocaine dissolved. The Health Canada certificate indicated that the solution was 63% cocaine in each bottle. This would mean that 2.835 litres of cocaine were being imported. This is well beyond the amount that anyone could use personally and was obviously intended for trafficking.

I asked the accused if s/he wanted to say anything, s/he did not have to and I would ensure that s/he had a lawyer to speak to before any questioning. The accused waived the right to a lawyer and told me that the customs inspector was lying and misconstrued pretty well everything that s/he had said. The accused told me that s/he went to Colombia on business and was bringing the liquor back as his/her firm might be interested in establishing business connections with Colombia. They were always looking for new markets. S/he did not know that there was any cocaine in the bottles, but was asked to deliver these to the Colombian Import Centre, given cards for that group, and told that this is the company that could help set up business with the accused's company.

I did find a company in the phone book called Colombian Imports Inc. but had no other dealings with them. I am aware that some people claim to be "blind couriers" in narcotics importing cases, meaning that they do not know what they are bringing in, but I think this very unlikely. It would mean trusting a shipment of drugs worth a great deal to someone unknown. This shipment was worth almost \$100,000. No one was going to take a risk on losing that sort of money. If an exporter in Colombia let that sort of shipment go out unsupervised, and it was lost or intercepted by the police, the exporter would be dead in a day.

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 there was cocaine in the bottles. A certificate of analysis has been provided. This does not reflect a real certificate and is for mock trial purposes only.

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. ARI THROXALON

Description of Witness

Ari Throxalon, the accused in this case, is 45 years old. S/he works as an agent for Universal Import and Export, which is based in London, England, but has offices in Toronto, New York, Paris, Beijing and Moscow. S/he is divorced, but has teenaged children. The accused has no criminal record.

Anticipated evidence of the Witness

On July 1st, I was returning to Canada after a business trip to Colombia. I was there for three weeks. One of the reasons I went was to see if our company could open up an office in South America. We were considering Bogota, Brasilia and Rio. These were exploratory discussions, meeting local suppliers, bankers and so on. If there was enough interest, we could open an office and be in the market as a major player in import and export. This would be particularly important if there were expanded free trade zones between North and South America.

I met with a potential supplier named Galtieri. He told me that his firm saw the Canadian market as a good opportunity for expansion. They had interests in fruit exports, textiles and were getting into liquor. They had dealt with a small company in Canada called Colombia Imports, but were always interested in new business ties. He said that I could have samples of the liquor for my customers, but that due to a licensing agreement it would have to go to Colombia Imports for clearance and then could be returned to our company. I thought nothing more of this. I took the bottles, put them in my luggage and returned.

I met the customs inspector at Pearson. S/he is not correct in what she claimed I said. I told her that I went down on business, too bad it was not a vacation, I was travelling alone, used to be married and had two teenaged kids. I also told her that I worked for Universal Import and Export and had other licensing commissions. Jamie Bond is the president of the Canadian office of our company. I told the Mountie this as well.

I did keep saying “why” when I found out that there was cocaine in the bottles, but was asking why I was used this way.

I earn a six figure salary plus commissions and have no need to do something like this. I admit that I have had some cash flow problems due to the divorce, but have a solid group of assets and if the South American operation opens up will likely triple my income. I also hold licensing agreements which are not worth anything now, but could be in time.

I know that my lawyer has tried to get hold of Colombia Imports ever since I was charged but they will not return calls or get involved. Galtieri has stated that he cannot travel outside his country and then shown no willingness to help.

I am completely innocent of this charge.

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.

R. v. ARI THROXALON

Description of Witness

Jamie Bond is the president of Universal Import and Export (Canada) Ltd. S/he is sixty and has been the president of the Canadian office for seven years. During this time, s/he has pursued aggressively new markets and looked to expand business. S/he has no criminal record and is being considered for a position with the parent company in London. However, that has been put on hold since Throxalon was charged.

Anticipated evidence of the Witness

My name is Jamie Bond. I am the president of Universal Import and Export (Canada) Ltd. I am sixty and have been the president of the Canadian office for seven years.

During this time, we have been working hard to get into new markets. South America is a good place for expansion and if there are free trade negotiations, and these result in new agreements, then we could benefit. I asked Ari to do an exploratory trip to South America to see if we should consider opening an office or perhaps more than one there. The dollar is strong right now so the cost of expansion would be low. I was thinking of several places in the south for offices, but asked him/her to make the best decisions and see what s/he could come up with. I have always been a hands off manager and let the employees rise to the level of their competence. This has been a successful formula for me. If we expanded into South America, there would be major benefits for all concerned.

I heard about this unpleasantness with the day after it happened. I was shocked. Ari is a good employee, one of the best, and knows business. There was no need to do something like this and quite frankly I don't believe s/he did it. S/he must have been used for a pawn.

We do have some contacts with a small company here in southern Ontario called Columbia Imports or something like that, but quite frankly that it well below the level of work I

deal with and files involving them would not reach my attention. I am sorry that I cannot be more helpful.

I do know that Ari had a bit of a cash flow problem from his/her divorce, but nothing that struck me as a big issue.

I do hope we can resolve this matter soon. It is holding back the company and London wants this over with soon. If the matter is not favourably resolved, I do not think they will be pleased.

I will be pleased to come to court in support of my employee.

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 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 a drug importing/possession for the purpose of trafficking 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 customs inspector who was on duty when the accused came back to Canada as well as the RCMP officer detective. Under Canadian law, in order to obtain a conviction for importing a drug, the Crown must prove that the accused knew that s/he was bringing a drug into Canada or was wilfully blind to that possibility. Wilful blindness arises when a person knows that there is a reason to suspect something is wrong and deliberately refuses to make inquiries which would let the person know the true state of affairs. In order to prove possession for the purpose of trafficking, the Crown must prove that the accused knew s/he had drugs and intended to distribute them in some way, whether by delivery or sale.
2. A drug analysts' certificate is included in this year's instructions. In order to simplify the case, it is to be agreed on as evidence without the need to call the analyst, but will have to be put in through the RCMP officer unless the Crown and defence otherwise agree.
3. The relevant sections of the Controlled Drugs and Substances Act are reproduced below.
4. Participants are to assume that the Canadian Charter of Rights and Freedoms has been complied with.
5. In keeping with past mock trials, which were trials in the Superior Court and in which the students presenting the cases gowned, this matter will be tried by a Superior Court judge sitting alone (no jury).
6. A judge may accept all, some or none of the evidence of any witness.
7. 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.

8. Any exhibit which is introduced will be deemed to be the same item that was seized from the crime scene or the accused without the need for further proof.
9. The RCMP officer is an expert witness as well as an investigator. The Crown and defence may agree upon this or the Crown may have to lead evidence to establish this. If the Crown leads such evidence, considering time constraints, it should be kept to less than one minute.

GOOD LUCK TO ALL !

RELEVANT LAW

CONTROLLED DRUG AND SUBSTANCES ACT PROVISIONS

Definitions

"traffic" means, in respect of a substance included in any of Schedules I to IV,

1.(a) to sell, administer, give, transfer, transport, send or deliver the substance,

(b) to sell an authorization to obtain the substance, or

(c) to offer to do anything mentioned in paragraph (a) or (b),

Trafficking

5. (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.

Possession for purpose of trafficking

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

Punishment

(3) Every person who contravenes subsection (1) or (2)

(a) subject to subsection (4), where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

Importing

(1) Except as authorized under the regulations, no person shall import into Canada or export from Canada a substance included in Schedule I, II, III, IV, V or VI.

Punishment

(3) Every person who contravenes subsection (1) or (2)

(a) where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

SCHEDULE I

(Sections 2 to 7, 29, 55 and 60)

Coca (Erythroxyton), its preparations, derivatives, alkaloids and salts, including:

1.(1) Coca leaves

(2) Cocaine (benzoylmethylecgonine)

(3) Ecgonine (3-hydroxy-2-tropane carboxylic acid)

HEALTH CANADA

CERTIFICATE OF A

DRUG ANALYST

I, Scienta Analysta, a designated analyst pursuant to the provisions of the Controlled Drugs and Substances Act, declare:

1. On July 10, 2007 I received from RCMP Officer Do-Right three bottles of liquor in a sealed condition.
2. That upon analyzing the contents of each of the said bottles, I determined that each bottle contained a controlled substance, to wit, cocaine.
3. That the qualitative analysis of each bottle was that the solution in the bottles was 1.5 litres, and the solution was 63% pure cocaine.
4. That the quantitative analysis of the contents of the bottles was that the total liquid was 4.5 litres and at 63% cocaine the content of the bottles was 2.835 litres of cocaine.

DATED AT TORONTO this 11th day of July, 2007.

Scienta Analysta