

IN THE SUPERIOR COURT OF JUSTICE

CANADA)	HER MAJESTY THE QUEEN
)	
PROVINCE OF ONTARIO)	against
)	
YOURTOWN REGION)	EDVARD NOSFERATU
)	Also known as
)	HOWARD STUNNED

1. Edvard Nosferatu, also known as Howard Stunned, stands charged that he, between July 1, 2008 and July 5, 2008, both days inclusive, in a public place, to wit: the City of Yourtown in the Region of Yourtown, did by communicating statements against the Floman ethnic group, incite hatred against the Floman ethnic group, with a likelihood of leading to a breach of the peace, contrary to the Criminal Code;
2. And stands further charged that he, between July 1, 2008 and July 5, 2008, both days inclusive, at the City of Yourtown in the Region of Yourtown, did by communicating statements against the Floman ethnic group, wilfully promote hatred against the Floman ethnic group, contrary to the Criminal Code.

DATED AT YOURTOWN this 5th day of December, 2008.

Bent Chrisley
Attorney General of Ontario

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Description of Witness

Kreva (Chris) Ohlanda is a member of the Floman ethnic group and a convention refugee in Canada. S/he came here in with his/her spouse and two young children 2003 after escaping persecution in Pottsylvania. S/he is the complainant in this case.

Anticipated evidence of the Witness

My name is Kreva Ohlanda. My English name is Chris.

I am a member of the Floman ethnic group. I was born in Pottsylvania in 1975. Pottsvylvain is ruled by the dictator Franco Stalinkov and has been for many years. Stalinkov has carried out a campaign of repression against the Floman people. We are often abused by the secret police, we cannot own land and the state has tried to suppress our religion and our culture. There is constant abuse of us. Our people have been referred to as Pixies. To us, this is a very derogatory term, but some do not know this.

I am married and our twins, a boy and girl, were born in 2000. I wanted to find a way to get away from Pottsylvania and make a better life. My spouse and I were able to bribe our way out of the country in 2003. We came to Canada and were accepted as convention refugees. We all became Canadian citizens in 2007.

Canada has been good to us, but it is hard to adapt. We do not speak English very well although we are trying. It has been hard to find a job other than as a labourer, although we are both mechanical engineers. We have been in a shelter. There have been some people who are very much against us, saying we are lazy and take their jobs. I do not understand how I am supposed to be lazy but at the same time take away someone's job.

Last year, I remember the time well, it was just after Canada Day, maybe the third or fourth. In our family we always celebrate this day as it is the time we have been given a new life in our new home. We were at the housing shelter when there were a bunch of young men outside. I thought something might happen; they looked like the type to cause trouble. I called the Yourtown Police and explained what was going on.

I went outside to make sure that no one would try to do anything. I thought I could talk to them. That was a mistake. The young men had a bunch of signs that had slogans like Death to Pixies. They started yelling at me. I can't recall everything, but I do recall someone in that crowd yelling "Howard is right" and just after that I was hit. I think it was a brick or bottle that someone threw. I don't know if the person who yelled was the same one who threw it.

The next thing I know a police officer was standing over me and facing the crowd. S/he had his/her gun drawn. I had a terrible flashback to Pottsylvania because of how we are treated there. But then I saw the officer had his/her gun toward the crowd and was protecting me.

There were a lot of police officers there and some of the young men were arrested, some ran away.

I have never heard of this Howard person or any one named Nosferatu. I have never done anything wrong to that person and I do not know why he or the men in that crowd would act the way they did. I am very grateful that the police intervened to protect us all.

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

Kennedy Whitenight is a member of the Special Joint Forces (RCMP/Ontario Provincial Police/Yourtown Police) Anti-Hate Crimes Unit, holding the rank of Corporal. S/he has been a police officer for fifteen years, all with the Yourtown Police, and was a founding member of the Anti-Hate Crimes Unit. This officer also holds a Master's degree in sociology and his/her thesis was "Policing and the Canadian Cultural Mosaic". S/he has been recognized as an expert witness in hate crime investigation in two other court cases.

Anticipated evidence of the Witness

My name is Kennedy Whitenight and I am a member of the Special Joint Forces Anti-Hate Crime Unit. We are based in Yourtown and have a mandate to investigate all offences which are motivated by hatred of any group, whether a visible or invisible minority. Unfortunately, Yourtown has been the site of several very ugly incidents of hate crime despite strong public statements by the Chief of Police and a high profile campaign by the mayor and many major civic, sports and entertainment figures to end this sort of conduct. Our unit is on alert as a result of this sort of conduct.

I am aware of the Howard Stunned radio show. It is carried on Q666 radio, which is based in Yourtown. The program seems to specialize in outrageous conduct by the host, programs in which guests are verbally attacked, and racist and sexist conduct of all sorts. I do not support this type of show, but as long as it does not violate the law and the conduct is within the scope protected by the *Charter* my duty is to defend its existence.

I became aware in the last week of June, 2008 of intended programming which I thought might violate the hate crime provisions of the Criminal Code. In the Yourtown Sun, where this program regularly advertises, ads were run with pictures of Mr. Stunned and banners with phrases such as "Pixies, you are next"; "It's Howard versus the Pixies Next Week" and encouraging listeners to tune in.

I was aware that a number of refugees from Pottsylvania had come to Yourtown. These are the Floman people, sometimes referred to as Pixies. Some are temporarily living in the Municipal Social Service Residence. I listened to the program on July 1 and found a litany of

anti-Floman comments, including remarks saying that they should go home or they will be sent home one way or another, Stalinkov was okay by the hosts, and so called jokes such as “What does P.S.T. mean? Pixies Suck Tax” or “What do you call 50 Pixies at the bottom of the ocean? An excellent start!”. Mr. Stunned was the originator of several of these and similar comments, but not all. He would often say, “Hey, we are just having fun here” as if to excuse his conduct. This continued throughout the week. I do recall one comment made by someone on the show, I cannot recall who, that they were not actually telling anyone to beat up anyone else. That drew a big laugh from the host. To me, this program was like a Ku Klux Klan meeting with commercials.

In my view, the tenor of the radio program was to attack the Floman people, who are an oppressed minority in Pottsylvania and have historically been discriminated against in other countries. The comments about just having fun or not wanting anyone to be beaten up are nothing but an attempt to provide a defence in case anyone is hurt and criminal charges or a civil suit is launched. I have seen this sort of commentary before at public meetings of skinheads, who are a notoriously racist group.

I was involved in the investigation of the attack on Kreva Ohlanda at the Municipal shelter, but only arrived after the incident. When I heard that before the victim was struck, one of the crowd yelled something in support of the Stunned radio program, I determined that charges of inciting hatred should be laid. After discussions with my unit commander, two counts were laid. I had wanted to charge Stunned (who I now know to actually be Edvard Nosferatu) as a party to the assault with a weapon on the complainant, but was overruled by my superiors.

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.

As an expert witness, you will be allowed to give some comments on matters, but only of a limited scope. You could not give a comment on, for example, guilt or innocence.

Your credibility is central to this case.

R. v. EDVARD NOSFERATU

Description of Witness

Edvard Nosferatu is 35 years old, married with two young children and is employed as a radio show host. His program is nationally syndicated but is based in Yourtown and broadcasts on Q666 radio. He has no criminal record.

Anticipated evidence of the Witness

My name is Edvard Nosferatu. I am the host of the Howard Stunned Radio show and use that as my stage name. The program is on Q666 Radio here in Yourtown. This is the fourth year of broadcasting. Before I started this show, the Q666 ratings were in the toilet. I was brought in to bring up the ratings. I decided to look to other stations and programs and see what worked for them. I could have created a classical music program or all news radio, but that would not bring in the dollars the station needed. So, the formula was simple. I looked to the U.S. where talk radio is big and the more outlandish the hosts the bigger the audiences. I use the old “shock jock” formula. I think it was Barnum who said that no one ever went broke underestimating the taste of the public. That is what I decided to do.

I had no intention of actually discriminating against anyone and I certainly did not want anyone to get hurt. I am sorry about that person, but hey, I did not do it. We have tried to do more outlandish things. On the show, I have people on and then spend most of the time making fun of them. We have some weird people on, like those guys from the Committee to Re-Invade Viet Nam. I mean, what sort of lunacy would that be? But it got ratings! If we are guilty of anything, it is bad taste, but no matter how bad the taste shown, it seems to work. One example of that is our John Wilkes Booth Appreciation Day on April 14th.

We knew that immigration was a sore point with some people and there is always controversy about it. There are bigots who say keep everyone out, there are others who say let everyone in. We knew we would get a reaction. That is what we wanted. People will tune in then. Sure, the program was considered as to how far we could go. We did not want anyone to get hurt. Of course there are skinheads and those types in the City, I won't deny that. But I am not one of them and was not trying to encourage them. In fact, when some of them were on the

show I ripped them apart. They left looking like a dog's breakfast. It was actually fun to stick the knife in them.

So, we chose Canada Day week as a way to get the most ratings. I am not a bigot, after all my grandparents were immigrants. I also give a lot of money to charities and cultural programs, but I do it under my real name, not my stage name. If I did it under my stage name, that would affect the ratings. Anyways, it was one week of banter. When we heard about that person being hurt and the demonstrations, we had a board meeting to decide if we should cancel the remaining one or two shows. We decided against it. The week had been heavily advertised and the ratings numbers were looking good. And anyways, all we were doing was talking.

So, about two weeks after the radio program week was over and we moved on to other things, the police showed up at the station and gave me a summons to appear in court. I wanted to know what this was all about, but the cop who served it said "I think you need a lawyer" and left. I don't know why I was charged. This is just shock jock banter.

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.

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Description of Witness

Miki Inoyamah is the producer of the Howard Stunned Radio Show. S/he is 45 and has been in the broadcasting business for over 20 years, after graduating with a Master's Degree in Journalism from Carlton University. Inoyamah worked for CBC Radio for ten years after school and then became a radio ratings consultant, running his/her own firm. Three years ago, Q666 radio hired Miki full time to work on the Howard Stunned show.

Anticipated evidence of the Witness

My name is Miki Inoyamah. I produce the Howard Stunned Radio Show. This show was designed to generate controversy as a means of getting good ratings. Howard (I always refer to him by his stage name) had been working on the show for about one year before I came on board. It was getting okay ratings, but not great. It had certainly perked up when he took over the morning time slot. In conjunction with him, we worked on getting better ratings. That is what drives radio and really all commercial communications. So, we had to figure out ways to get a greater market share. Howard was doing the basic shock jock routine, but we just decided to take it a step further and it worked. He plays a guy who is always getting more controversial. I want to make that clear, he plays a part, he is not like that in reality, although with some of the people who call in to the show, you would not know that. They think Howard really is as nutty as a fruitcake. Far from it, he is a very shrewd businessman.

The Pixies idea came out of one of our regular programming meetings. We plan the shows as far in advance as possible. This was going to be a week-long theme, so advertising had to be arranged, research done to give some basic facts about these people and so on. One of the production crew asked about Human Rights complaints and whether the Canadian Radio and Telecommunications Authority would come down on us for this. We figured let them. Every time they fine us, we just broadcast that and the ratings are up again. One of the staff said what if someone out there took this seriously, we figured that we would just make our comments more outrageous, that would show how cartoonish all this was.

The programs went pretty much as planned. We did hear about the person being hurt and that makes me very sorry, but that is not something we did. We were so far over the top, no one

could take us seriously. We thought about whether the remaining programs should be stopped, but there was way too much money invested in the week.

After the week was over, we heard nothing more from the Human Rights people or the CRTC, but did receive a summons. We called that station lawyers in then. I do not understand this as a criminal prosecution. I could see a CRTC complaint, but this is too much. We are entertainers, not criminals. We are controversial, we do things just to get ratings, we have some sleazy stuff on the show. But look, this is adult entertainment. We do not pitch this to kids or vulnerable people. None of us would ever allow our kids to listen in.

I will come to court in support of Howard.

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.

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Your credibility and reliability are central to this case.

A witness with a 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/colleague of the accused.

NOTICE TO MOCK TRIAL PARTICIPANTS

The problem in this year's mock trial is a hate crime 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 victim of the assault which occurred at the protest that was allegedly connected to the radio broadcast as well as the police officer who heard the radio broadcasts and had some involvement with the victim. Please note that there are two charges which were laid against the radio show host, that of inciting hatred likely to lead to a breach of the peace and wilfully promoting hatred against an identifiable group.
2. Under Canadian law, in order to obtain a conviction for these offences, the Crown must prove that the accused intended to promote hatred. This can be done if the accused had as their intention the promotion of hatred or if they foresaw that the promotion of hatred against the identifiable group was certain or morally certain.
3. As well, promotion requires active support or instigation, not simply basic encouragement.
4. Hatred means intense or extreme emotions associated with detestation or vilification. It is an emotion which means that members of the group are to be ill treated, scorned or despised due to their being a part of that group.
5. In determining these issues, a court will consider the understanding of a reasonable person as to the meaning of the message being conveyed. Nonetheless, the intention of the accused must be considered. Simply because a person claims that their words were not intended to promote hatred does not mean that the Court must accept this explanation. A court can accept some, all or none of the evidence of any witness.
6. S. 319(1) requires less than the intentional promotion of hatred. S. 319(2) requires either the intentional promotion of hatred or foresight that hate will certainly be promoted against a group due to statements made and the person nonetheless made those statements.

7. Wilful, in this section, includes wilful blindness, which means that a person knows that there is a reason to suspect something is wrong and deliberately refuses to make inquiries or take steps which would let the person know the true state of affairs.
8. Participants are to assume that the Canadian Charter of Rights and Freedoms has been complied with.
9. In keeping with past mock trials, which were trials in the Superior Court and in which the students presenting the cases gownned, this matter will be tried by a Superior Court judge sitting alone (no jury).
10. 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.
11. There are no exhibits in this case.
12. The police 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.
13. Participants must also understand the difference between intent and motivation in a criminal case. A motive is why someone did something (A killed B to claim insurance money). The intention is the wish to achieve a certain outcome (A shot B to make sure B was dead).
14. A court may draw an inference that a person intends the natural consequences of their acts. This is only an inference, not a presumption.

GOOD LUCK TO ALL!

RELEVANT LAW

Public incitement of hatred

319. (1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Wilful promotion of hatred

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

Defences

(3) No person shall be convicted of an offence under subsection (2)

- (a) if he establishes that the statements communicated were true;
- (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject or an opinion based on a belief in a religious text;
- (c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or
- (d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

Forfeiture

(4) Where a person is convicted of an offence under section 318 or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the presiding provincial court judge or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

Exemption from seizure of communication facilities

(5) Subsections 199(6) and (7) apply with such modifications as the circumstances require to section 318 or subsection (1) or (2) of this section.

Consent

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.

Definitions

(7) In this section,

"communicating"
«*communiquer* »

"communicating" includes communicating by telephone, broadcasting or other audible or visible means;

"identifiable group"
«*groupe identifiable* »

"identifiable group" has the same meaning as in section 318;

"public place"
«*endroit public* »

"public place" includes any place to which the public have access as of right or by invitation, express or implied;

"statements"
«*déclarations*»

"statements" includes words spoken or written or recorded electronically or electro-magnetically or otherwise, and gestures, signs or other visible representations.

R.S., 1985, c. C-46, s. 319; R.S., 1985, c. 27 (1st Supp.), s. 203; 2004, c. 14, s. 2.