

1998 MOCK TRIAL CASE

CROWN WITNESS #1 - FACT SHEET

Officer Hamstead has been with the local police for eight years. He/she has been assigned to the drug squad for the last two years. On August 3, he/she was working at the Main Street Mall in plainclothes. He/she noticed two young people coming toward him/her, one of whom he/she recognized as D. Benning, a young person who had been arrested by police several times for drug charges. He/she saw the tip of a handrolled cigarette in Benning's pocket. He/she stopped Benning, frisked Benning and discovered a bag of marijuana in Benning's jacket pocket. He/she confiscated the drugs, placed them in an exhibit bag, and marked his/he initials and D. Benning on the bag for future identification. It seemed to him/her that the amount he/she found on Benning was too small an amount to warrant a trafficking charge against Benning, so he/she offered Benning the deal of not charging him/her in return for information about who had sold Benning the drugs. Benning told him/her that he/she had bought the drugs from T. Brogue who lived at 2405 Barclay Street.

Officer Hamstead then took D. Benning with him/her and with the assistance of another officer, went to T. Brogue's apartment. In the car Benning told him/her that he/she thought that T. Brogue kept his/her stash of drugs hidden in the bathroom somewhere. Hamstead arranged for a telewarrant to search Brogue's apartment, he/she was granted the warrant and when he/she received it proceeded to 2405 Barclay Street. Hamstead left Benning in the car, went to Brogues's apartment, identified him/her self and gave Brogue a copy of the warrant to search the apartment. Brogue blocked the door, but after Hamstead's third request, finally allowed Hamstead into the apartment. Officer Hamstead then searched the bathroom and behind the toilet. Hamstead found a bag with two smaller bags inside it. One of the smaller bags contained a white powder material later identified by the police lab as cocaine, and the other bag contained a green substance later identified as marijuana. He/she placed these into an exhibit bag as he/she had with Benning's drugs and marked it "T. Brogue." There were about two ounces of cocaine and ten ounces of marijuana.

After finding the drugs, Hamstead searched the rest of Brogue's apartment; in the kitchen he/she found two boxes of "Baggies" similar to the bag which contained the drugs found on Benning. He/she noted that there were several black lights and black light posters in the apartment.

Brogue denied knowing anything about the drugs. Hamstead told Brogue he/she was under arrest for trafficking in narcotics. Before he/she took Brogue out to the car, he/she sent the other officer out to release Benning so that Brogue and Benning would not come into contact with one another.

Officer Hamstead will testify that T. Brogue offered no resistance to being arrested and that Brogue denied knowledge of the drugs, however, Hamstead can't recall whether Brogue seemed very surprised that the drugs had been found in his/her apartment.

After he/she had finished with T. Brogue, Hamstead went back to the office where he/she drew a floor plan of Brogue's apartment as he/she remembered it.

Constructive Suggestions

You will play Officer Hamstead in the mock trial. In order to carry out your role successfully, you will have to meet with the Crown counsel before the trial to work out other details about your character. You may want to discuss matters such as where you took Brogue after leaving the apartment, why you didn't charge Benning, where exactly the drugs were found, etc. These questions may be asked of you on the witness stand.

In your discussion with Crown counsel, make sure that the details of your story agree with what other witnesses for the Crown will say.

During your testimony, you will be asked by the Crown counsel to identify a number of exhibits: the drug you found on Benning, the drugs you found in Brogue's apartment, the certificates of analysis stating what the drugs are and that Benning's drugs matched Brogue's drugs, and the floorplan of Brogue's apartment which you drew. As the Crown counsel hands you each exhibit, examine it and confirm that it is what it is said to be. (eg. "Yes, these are the drugs I found on D. Benning, and I can tell because I initialled them at the time and my initials are still on the bag.") Confirm that the certificates which you will be shown were the ones that you received from the police laboratory after you took the drugs there for analysis.

It is impossible to prepare for every question which you may be asked. Try to anticipate what you will be asked and prepare as much as you can, but be prepared to give answers on the spot.

Try to keep your story consistent throughout your testimony.

Your credibility is on the line. You have to make the judge believe that you are telling the truth.

INSERT FLOOR PLAN HERE OR ON THE NEXT PAGE

This is a diagram of T. Brogue's apartment which Officer Hamstead drew from memory as soon as he/she got back to the police station after arresting Brogue. He/She found the bags of drugs taped to the underside of the toilet tank behind the toilet. The furnishings were quite new, modern, and expensive looking.

CROWN WITNESS #2 - FACT SHEET

-Role - D. Benning

D. Benning is a nineteen year old unemployed youth. On Monday, August 3, Benning was searched by police when he/she was walking in the Main Street Mall. The police found one ounce of marijuana on him/her and told him/her they were going to charge him/her with possession of marijuana. One of the officers offered Benning a deal. He/She said that they would not charge him/her if he/she told the police where Benning had bought the marijuana. Benning agreed. He/She told the police that he/she had bought it from his/her friend T. Brogue earlier that day. He/She told the police that Brogue lived at 2045 Barclay Street in the west end of town and that they would find Brogue's stash if they went there and searched Brogue's bathroom.

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

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

Benning had been a good friend of Brogue's and had visited him/her frequently. He/She had been visiting Brogue earlier that day when he/she bought the drugs from Brogue. He/she had bought drugs from Brogue quite often and had been at lots of parties in Brogue's apartment at which drugs and alcohol were part of the scene.

Constructive Suggestions

In order to carry out your role as D. Benning successfully, you will have to meet with the Crown counsel before the trial to work out other details about your character. You may want to discuss the nature of your friendship with T. Brogue and issues such as the circumstances of your previous drug offences. You may be asked about these things on the witness stand.

In your discussion with the Crown counsel, make sure that the details of your story agree with what other witnesses for the Crown will say.

Also, when you are on the witness stand, you may be asked to identify an exhibit, probably the package of drugs which Officer Hamstead found on you. If this happens just agree that it is the same package which you had that day.

It is impossible to prepare completely for every possible question which may be asked of you. You will have to be flexible and prepared to respond on the spot. Be consistent throughout your testimony.

Your credibility is on the line. You will have to make the judge believe that you are telling the truth.

DEFENCE WITNESS #1 - FACT SHEET

Role: W. Brogue

W. Brogue is 27 years old and is a high school teacher. One of his/her duties at the high school is to act as a counsellor for students. In doing so, he/she has seen many students who use drugs, so he/she is very familiar with symptoms of drug use.

He/She and his/her younger brother/sister, T. Brogue, are very close, and although T. Brogue has been living on his/her own for about a year, W. Brogue still keeps close contact with T. Brogue. He/She is very sure that T. Brogue does not do any drugs at all. He/She knows that T. Brogue is a very good athlete. He/She and T. Brogue play squash together once a week.

W. Brogue knows that T. Brogue has parties at his/her apartment quite often and that many of T. Brogue's friends smoke marijuana. Although he/she wishes that T. Brogue would'nt have those parties, he/she hasn't been too worried because T. Brogue has always reassured him/her that he/she (T. Brogue) doesn't do any drugs.

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

W. Brogue was absolutely shocked to hear that T. Brogue had been charged with trafficking in narcotics. He/She is sure that T. Brogue is innocent.

Constructive Suggestions

You are going to play W. Brogue in the mock trial. In order to carry out your role successfully, you will have to meet with the defence counsel to work out the details of your character. For example, you may want to discuss how often you see T. Brogue, the name of the supermarket where he/she works at, what you teach in school, etc. These questions may be asked of you on the witness stand.

In your discussions with the defence counsel, make sure that the details of your story agree with what T. Brogue will say on the witness stand.

Also, when you are on the witness stand, you should be prepared to improvise but not unfairly create new facts. It impossible to anticipate and prepare for every question which may be asked of you, so you may have to provide answers on the spot. Remember to keep your story consistent throughout your testimony. Your credibility is on the line. You have to make the judge believe that you are telling the truth.

DEFENCE WITNESS #2 - FACT SHEET

Role - T. Brogue

T. Brogue is eighteen years old. He/She moved away from home about a year ago and lives in his/her own apartment at 2045 Barclay Street. His/Her apartment costs \$400.00 per month. T. Brogue has furnished the apartment well, having bought a stereo, large screen TV, a computer with a CD ROM, and other "toys". He/She also drives a 1996 Mustang Convertible which is "in mint condition". He/She financed this by working at a local supermarket part-time (about 20-25 hours per week earning minimum wage). His/Her parents have helped finance his/her apartment and have given him/her money whenever he/she needed it.

T. Brogue holds parties at his/her apartment regularly, and he/she knows that many of his/her friends do drugs at these parties, but he/she never does any drugs himself/herself. One of his/her close friends, D. Benning, comes over to T. Brogue's place often and, in fact, visited several times in the week preceding August 3rd. There have even been several occasions when D. Benning has stayed over and slept on the couch.

On the morning of the 3rd, D. Benning showed up at T. Brogue's place and asked T. Brogue if he/she wanted to go for a walk through Centre Park. T. Brogue thanked him/her but declined the offer because he/she had things to do that day. He/She remembers that D. Benning went to the washroom. When D. Benning came out of the washroom, he/she left.

T. Brogue has never known for sure, but has suspected for some time that D. Benning sells drugs for a living.

On the afternoon of August 3rd, T. Brogue heard a knock on the door. When he/she answered, he/she was confronted by a police officer who said he/she had grounds to believe that narcotics are on the premises, showed Brogue a search warrant and asked if he/she could come in. T. Brogue was shocked when the officer came out of the washroom with a bag containing drugs. T. Brogue knew nothing of the drugs. T. Brogue co-operated fully with the police and told them that someone else must have put the drugs in the washroom during one of the parties at the apartment. T. Brogue believes the drugs belonged to D. Benning and he/she feels angry that his/her friend set him/her up in order to protect himself/herself. T. Brogue now feels that he/she was being used by D. Benning all along.

Constructive Suggestions

You are going to play T. Brogue in the mock trial. In order to carry out your role successfully, you will have to meet with the defence counsel before the trial to work out details of your character. You may want to discuss the nature of your friendship with D. Benning, how

much money your parents gave you, or even how far you went in school and why you quit. These questions may be asked of you on the witness stand.

Also, when you are on the witness stand, you may be asked to look at an exhibit, probably the floor plan of your apartment as drawn by Officer Hamstead. When this happens, look at it and agree that it accurately depicts the plan of your apartment.

It is impossible to anticipate every question which may be asked of you. Try to prepare as well as you can, but be aware that you may have to answer questions that you haven't anticipated. On the witness stand, you will have to be flexible. Remember to keep your story consistent throughout your testimony.

The verdict in this case may largely depend on your credibility. You have to make the judge believe that you are telling the truth.

X THE INDICTMENT

File Number
327052798

CANADA
PROVINCE OF ONTARIO
JUDICIAL DISTRICT OF YORK

HER MAJESTY THE QUEEN
against

T. BROGUE

Indictment

Name of
accused T. Brogue

State

Offence COUNT 1 That, in this town and county, in this Province, in the Judicial
District of _____, Ontario he/she did unlawfully traffic a narcotic, to wit:
marijuana, contrary to the provisions of the Narcotic Control Act.

COUNT 2 That, in this town and county, in this Province, in the Judicial
District of _____, Ontario he/she did unlawfully possess a narcotic, to wit:
marijuana, contrary to the provisions of the Narcotic Control Act.

COUNT 3 That, in this town and county, in this Province, in the Judicial
District of _____, Ontario he/she did unlawfully possess a narcotic, to wit:
cocaine, contrary to the provisions of the Narcotic Control Act.

Dated this _____ day of _____, at _____.

Agent for the
Attorney- General of Canada

THE NARCOTIC CONTROL ACT

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

PART 1 OFFENCES AND ENFORCEMENT *Particular Offences*

POSSESSION OF NARCOTIC - Offence

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

Section 3(1) outlaws possession.

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

TRAFFICKING - Possession for the purpose of trafficking - Offence.

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

The final section of the *Narcotic Control Act* is the "schedule" which lists all substances deemed to be narcotics. The substance must be listed somewhere in the schedule in order for the provisions of the Act to cover it.

Schedule - *continued*

2. *Coca (Erythoxylon)*, its preparations, derivatives, alkaloids and salts, including:

(1) Coca leaves

(2) **Cocaine, and**

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

3. *Cannabis saliva*, its preparations, derivatives, and similar synthetic preparations, including:

(1) Cannabis resin,

(2) **Cannabis (marihuana),**

(3) Cannabidiol,

(4) Cannabinol (3-n-amy-6,6,9-trimethyl-6-dibenzopyran-1-ol),

(5) Pyrahexyl (3-n-hexyl-6,6,9-trimethyl-7,8,9,10-tetrahydro-6-dibenzopyran-1-ol), and

(6) Tetrahydrocannabinol

Constructive Suggestions

Note that an important element of any offence is "intent". In other words, in most cases a person is not guilty of an offence if no intention existed to commit the offence. In this case, T. Brogue cannot be found guilty of possession simply because the drugs were found in his/her apartment. In order to convict, the jury would have to conclude that he/she knew they were there.