

FACT SHEET

Crown witness #1 – Police officer K. Hamstead badge #478 – local police

Officer Hamstead has been with the local police for eight years. S/he has been on the drug squad for the last two years. On August 3rd, s/he was working on the Main Street Mall in plain clothes. S/he noticed two people coming toward him/her, one of whom s/he recognized as D. Benning, a young person who had been arrested by the police several times for drug charges. S/he saw the tip of a hand rolled cigarette in Benning's pocket. S/he stopped Benning, frisked Benning and discovered a bag of marijuana in Benning's jacket pocket. S/he confiscated the drugs, placed them in an exhibit bag, and marked his/her initials and "D. Benning" on the bag for future identification. It seemed to him/her that the amount s/he found on Benning was too small to warrant a trafficking charge against Benning, so s/he 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 s/he 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 s/he thought Brogue kept his/her stash of drugs hidden in the bathroom somewhere. Hamstead left Benning in the car and went into Brogue's apartment. When he got up to the apartment, he knocked and stated that s/he believed that there were drugs on the premises and he needed to search the bathroom. Brogue opened the door and Hamstead went into the bathroom and behind the toilet 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. S/he placed these in an exhibit bag as s/he had with Benning's drugs and marked it "T. Brogue".

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

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

Officer Hamstead will testify that T. Brogue offered no resistance to being arrested and that Brogue denied knowledge of the drugs. Hamstead can't recall whether Brogue seemed very surprised that the drugs had been found in his/her apartment. After s/he had finished with T. Brogue, Hamstead went back to the office, where s/he drew a floor plan of Brogue's apartment as s/he remembered it.

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 character. You may want to discuss matters such as where you took Brogue after leaving the

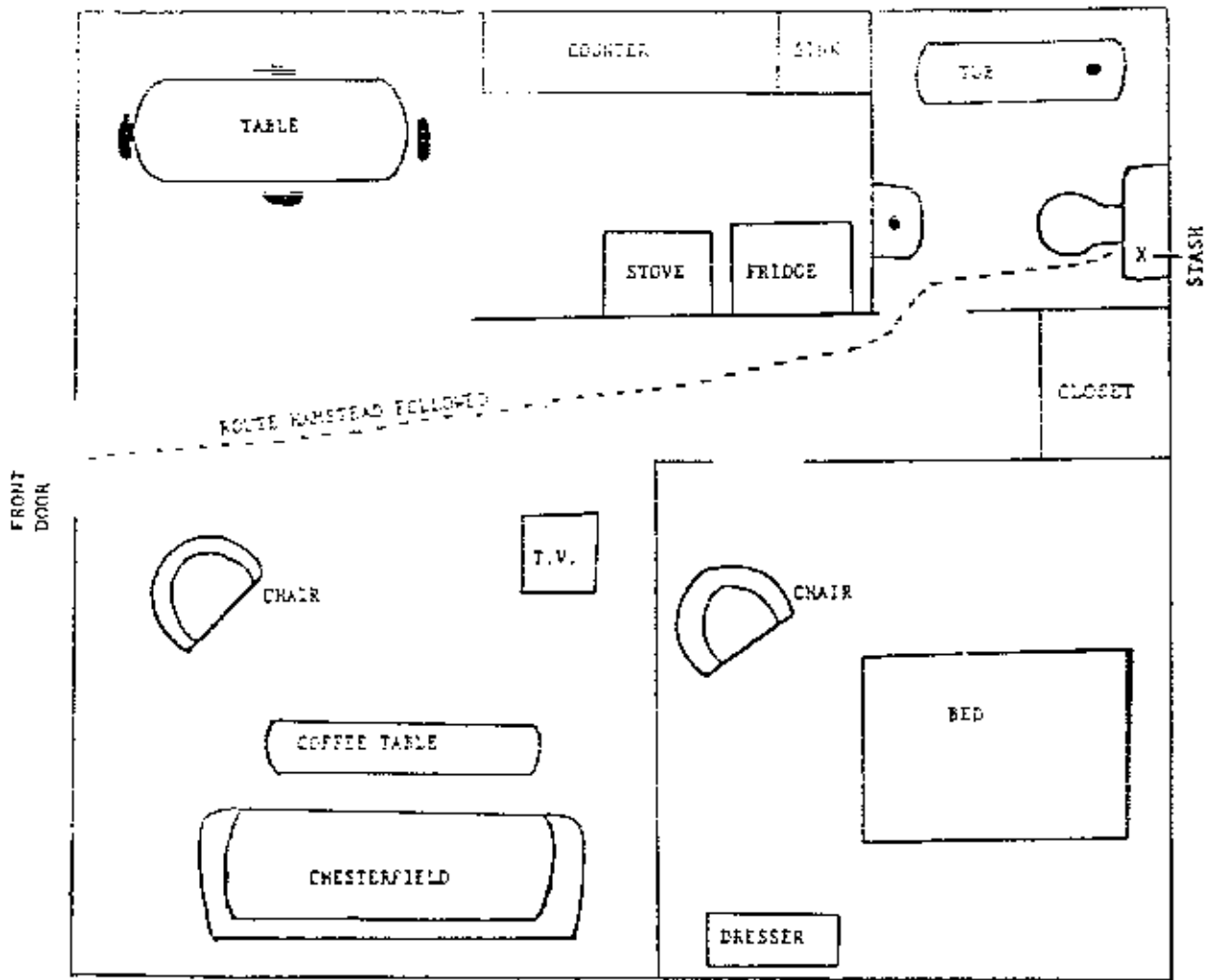
apartment, why you didn't charge Benning, where exactly the drugs were found, etc. These questions may be asked of you on the witness stand.

In your discussions 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 floor plan of Brogue's apartment which you drew. As the Crown hands you each exhibit, examine it, then confirm that it is what it is said to be. (For example, "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 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.



FACT SHEET

Crown Witness #2 – D. Benning

D. Benning is a nineteen-year-old unemployed youth. On Monday August 3rd, police searched Benning while s/he was walking down 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 policemen offered Benning a deal. S/he said that they would not charge him/her if s/he told the police where Benning had bought the marijuana. Benning agreed. S/he told the police that s/he had bought it from his/her friend T. Brogue earlier that day. S/he told the police that Brogue lived at 2405 Barclay Street in the west part of town. 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 s/he was free to go as they had found Brogue's drugs. They told him/her that s/he would be required to testify in court. Benning was later interviewed by Crown counsel and told the same story to the Crown s/he had told the police.

Benning was not charged with possession of marijuana. There was a great relief to him/her as s/he had 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. S/he had been visiting Brogue earlier that day when s/he bought the drugs from Brogue. S/he 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.

In order to carry out your role as D. Benning successfully, you will have to meet with the Crown 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 be prepared to respond on the spot. Be consistent throughout your testimony. Your credibility is on the line. You have to make the judge believe that you are telling the truth.

FACT SHEET

Defence Witness #1 – W. Brogue

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

S/he and his/her younger brother/sister, T. Brogue, are very close. Although T. Brogue has been living on his/her own for about a year, W. Brogue still keeps in close contact with T. Brogue. S/he is very sure that T. Brogue does not do any drugs at all. S/he knows that T. Brogue is a very good athlete. S/he 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 s/he wishes that T. Brogue wouldn't have those parties, s/he hasn't been too worried because T. Brogue has always assured him/her that s/he (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 s/he 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. S/he is sure that T. Brogue is innocent.

You are going to play W. Brogue in the mock trial. In order to carry out your roles 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 s/he 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, 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 stand, you should be prepared to improvise but not unfairly create new facts. It is impossible to anticipate and prepare for every question, which may be asked of you, so you may have to provide an answer 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.

FACT SHEET

Defence witness #2 – T. Brogue – The Accused

T. Brogue is 18 years old. S/he moved away from home about a year ago and lives in his/her own apartment at 2405 Barclay Street. His/her apartment costs about \$400 per month. T. Brogue has furnished the apartment well, bought a stereo, colour TV and other amenities. S/he financed this by working at a local supermarket part – time (about 20 – 25 hours per week). His/her parents have helped finance his/her apartment and have given him/her money whenever s/he needed it.

T. Brogue holds parties at his/her apartment regularly, and s/he knows that many of his/her friends do drugs at these parties, but s/he 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 August 3rd, D. Benning showed up at T. Brogue's place and asked T. Brogue if s/he wanted to go for a walk through Centre Park. T. Brogue thanked him/her but declined the offer because s/he had things to do that day. S/he remembered that D. Benning went to the washroom. When D. Benning came out of the washroom, s/he 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 s/he answered, a policeman who said s/he had grounds to believe that narcotics were on the premises confronted him. T. Brogue did not resist even though officer did not have a search warrant. 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 cooperated 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 belong to D. Benning and s/he feels angry that his/her friend set him/her up in order to protect himself/herself. T. Brogue now feels that D. Benning all along was using him.

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 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 stand, you may be asked to look at an exhibit, probably the floor plan of your apartment as drawn by Officer Hamstead. If 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 prepare as well as you can, but be aware that you may have to answer questions 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.

INDICTMENT

File Number
327052789

Canada
Province of Ontario
Judicial District of York

HER MAJESTY THE QUEEN

Against

T. BROGUE

INDICTMENT

Name of Accused: T. Brogue stands charged:

State Offence: Count 1 That, in the city of Toronto, in the Judicial District of York, Ontario, s/he did unlawfully traffic a narcotic, to wit: marijuana, contrary to the provisions of the Narcotic Control Act.

Count 2 That, in the city of Toronto, in the Judicial District of York, Ontario, s/he did unlawfully possess a narcotic, to wit: marijuana, contrary to the provisions of the Narcotic Control Act.

Count 3 That, in the city of Toronto, in the Judicial District of York, Ontario, s/he did unlawfully traffic 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

APPLICABLE LAW

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 the 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 regulations, no 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 purpose of trafficking – offence.

4. (1) no person shall traffic in a narcotic or any substance represented or held out by him 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 narcotic. The substance must be listed somewhere in the schedule in order for the provisions of the Act to cover it.

Schedule – continued

2. Coca (Erythroxyton), its preparations, derivatives, alkaloids and salts, including
 - (1) Coca leaves
 - (2) Cocaine, and
 - (3) Ecgonine (3 – hydroxy – 2 tropane carboxylic acid).
3. Cannabis sativa, its preparations, derivatives and similar synthetic preparations including,

- (1) Cannabis resin,
- (2) Cannabis (marijuana)
- (3) Cannabinol,
- (4) Cannabinol (3 – n – amyl – 6, 6, 9 trimethyl – 6 – dibenzopyran – 1 –ol),
- (5) Pyrahexyl (3 – n –hexyl – 6, 6, 9 – trimethyl – 7, 8, 9, 10 – tetrahydro – 6 – dibenzopyran – ol), and
- (6) Tetrahydrocannabinol.

Now that an important element of any case is the offence called “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 s/he knew they were there.

Note that the sections 7, 8, 9 (2) of the Narcotic Control Act are to be ignored, partly for simplification purposes and partly because after proclamation of the Charter of Rights and Freedoms, a number of appellate Courts have held that the reverse onus provision of section 8 is of no force and effect by reason of sections 1, 11(d), 24 and 52 of the Charter.

ENTERING EXHIBITS

To enter the narcotics etc., and Certificates of Analysis as evidence at the trial, the Crown prosecutor must have witnesses introduce them as they are telling their stories.

The Crown must show what happened to the narcotics etc. from the time they were taken from the accused until the trial. To do this, two witnesses, K. Hamstead, the police officer, and D. Benning, (with respect to the narcotics found on him/her) must identify the drugs.

The exhibits are as follows:

EXHIBIT A – a bag of marijuana (use tea leaves) found by Hamstead on Benning.

EXHIBIT B – a bag of marijuana (use tea leaves) found by Hamstead found in Brogue’s apartment.

EXHIBIT C – a bag of cocaine (use sugar) found by Hamstead in Brogue’s apartment.

EXHIBIT D – a Certificate of Analysis (included in kits) of drugs found on Benning.

EXHIBIT E – a Certificate of Analysis (including in kit) of drugs found in Brogue’s apartment.

EXHIBIT F – a drawing made by Officer Hamstead of a floor plan (included in kit) of Brogue’s apartment.

EXHIBIT G – Two boxes of baggies found by Hamstead in Brogue’s apartment.

Plus floor plan of the apartment

STRATEGY NOTES

Some strengths of the Crown's case:

- The drugs were found in Brogue's premises.
- The police were told that the drugs were there, where to look for them and they found them.
- The Crown has a witness who claims Brogue sold drugs to him/her.
- Brogue's lifestyle was too rich for someone who worked at a part – time job.
- There were baggies, black lights and posters in Brogue's apartment.

Some weaknesses of the Crown's case:

- The Crown's witness was not charged in return for giving evidence. His/her testimony must be suspect as s/he saved his/her own skin. In other words, it may be been worth it for him/her to lie.
- Brogue's brother/sister (who is very respectable) claims Brogue was able to afford the apartment with the money available.
- Brogue has no previous criminal record.
- No other drug paraphernalia (for example, weigh scales) were found in Brogue's apartment.