

**IN THE SUPERIOR COURT OF JUSTICE**

CANADA	)	HER MAJESTY THE QUEEN
	)	
PROVINCE OF ONTARIO	)	against
	)	
YOURTOWN REGION	)	KIM MAGNUM

1. KIM MAGNUM stands charged that s/he, on or about the 1<sup>st</sup> day of October in the year 2002, at the City of Yourtown in the Region of Yourtown, did use a firearm, to wit: a handgun, in robbing Jay Cashman of a sum of monies, contrary to the Criminal Code;

1. KIM MAGNUM stands further charged that s/he, on or about the 1<sup>st</sup> day of October in the year 2002, at the City of Yourtown in the Region of Yourtown, did by word of mouth, knowingly utter a threat to Jay Cashman to cause death to the said Jay Cashman, contrary to the Criminal Code;

1. KIM MAGNUM stands further charged that s/he, on or about the 1<sup>st</sup> day of October in the year 2002, at the City of Yourtown in the Region of Yourtown, did have in his/her possession property, to wit: money, of a value exceeding five thousand dollars, knowing that all of the property was obtained by the commission in Canada of an offence punishable by indictment, contrary to the Criminal Code.

DATED AT YOURTOWN this 5<sup>th</sup> day of December, 2002.

.....  
Assistant Crown Attorney and  
Agent for the Attorney General of Ontario  
**R. v. KIM MAGNUM**

## **Description of Witness**

Jay Cashman is a teller at the Yourtown Bank of Commerce and has been employed there for five years. S/he started at the bank just after finishing high school, is engaged and is considered a valued employee. Jay has never been the victim of any sort of criminal offence before and does not have any experience with guns. However, all bank tellers are told what to do when confronted with a robbery. The teller is told to co-operate with the robber, try to note the robber's physical characteristics for later identification, not to make any sudden movements which would scare the robber and possibly result in injury to anyone and try to insert a dye pack in the bag of money being given so that the funds would be marked when the pack explodes, rendering the funds unspendable. Jay was very upset by this event and cannot tell if s/he followed these procedures exactly.

## **Anticipated evidence of the Witness**

I was working the day shift at the bank on October 1<sup>st</sup>. Nothing unusual had occurred up until the last customer who handed me what I thought was a deposit slip. I took it and it was a note that said "I have a gun. I do not want to have to shoot you. Give me all your money and make it fast."

I was very upset by this but we are trained what to do in this sort of situation. I tried to remain calm, but I guess I went into automatic then. I tried to see if I could recognize the robber. Sometimes it will be a person who we have seen at the branch, but I did not know this person. I do recall s/he had short brown hair and brown eyes, a medium complexion and a distinctive nose. It looked like someone had broken it before. Everything was happening very fast, or so it seemed to me.

I took some money out of my drawer and started putting it in a bag that the robber had given me. I don't know how much I took, but because this was a day when we expected extra business, each teller was given \$5000 at the start of the day. Exactly how much came in and how much went out before this, I could not say. I put the dye pack in the bag as well. I think they explode five minutes after they are set. I do not know what colour they stain the money, but I know it is hard to get out. I don't know what happened to the note.

I looked over the counter when I gave the robber the money and saw what looked like a gun butt in the robber's pants waistband. Thank heaven s/he did not point it at me. It was a big gun, like you see on cop shows on TV.

The robber ran out of the bank and I pressed the alarm button. The manager came over and took me to the staff room and someone called the police.

About one month later, a police officer came to the bank and showed me a line up of six people. They all sort of looked like the robber and I picked one who looked most like that person. I was sort of sure that I picked the right one, but when the police officer told me something like, "I figured it was him/her, you picked the right one" then I was 100% sure.

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.

During your testimony, you may, but not necessarily will, 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 person's home.

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. KIM MAGNUM**

### **Description of Witness**

Marlowe Gumshoe is a member of the Yourtown Police Service holding the rank of Constable, first class. S/he has been a police officer for fifteen years and has worked in the drug enforcement unit, morality squad, youth bureau and hold up squad. Recently, s/he went back to uniform duties. Officer Gumshoe 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. After five years in the police department, s/he became a coach officer, meaning that s/he gave on the street supervision to other, less experienced officers.

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

On October 1, 2002, I was on a routine patrol when I received a radio call that the Yourtown Bank of Commerce had been robbed by an individual who was armed with a handgun. I was approximately two minutes from that location by car and I activated my emergency lights and siren to proceed directly there.

Upon my arrival, I saw that several other units had converged upon the scene and a uniformed sergeant was directing the deployment of officers. I was detailed to look for suspects in an easterly direction and started to drive toward the Coldstream bridge. On the way there I observed a person significantly ahead of me and running very quickly. S/he had an object in her/his right hand which could have been a firearm. I was driving and was at a distance of approximately fifty metres before I could recognize the item as a possible gun. I was not able to see precisely what s/he had. I was very concerned that this person was the robber. I drove as close to the person as I could and as I was exiting my vehicle I drew my service pistol. This is a 40 calibre Glock semi-automatic. At the same time as I was exiting the vehicle, I saw the person turn slightly and look over his/her shoulder. Fearing that the person might turn and fire in my direction, I took cover behind the car. The person did not fire, but threw the object which they had been carrying into the river. I would estimate that the time I was able to see the person was between 30 seconds and one minute. I re-entered my vehicle and re-engaged the pursuit, but was not able to locate the suspect. I returned to the bridge and secured that area so that any item thrown could be recovered by myself or divers. No item was recovered.

I returned to the police division after I was relieved at the bridge and commenced a search of police information and records for possible suspects. I had a feeling that the suspect on the bridge was known to me, but could not be sure. I made inquiries of various persons who had supplied information to me in the past and learned that Kim Magnum had been able to pay off several gambling debts shortly after the robbery and had been spending significant sums of money. I cannot reveal the names of these persons as they are confidential informers and I believe that if their identities became known they may be in danger.

Upon receiving this information, I checked various police photographs and obtained a

picture of Magnum. S/he had been convicted of a convenience store robbery several years ago and was sentenced to a year in jail plus probation. I was now sure that the person on the bridge who tossed the item away was Magnum. I went to the bank to see Jay Cashman to show him/her a line-up which contained the photograph of Magnum amongst five others. I gave Jay no information other than to say the robber may or may not be in the line-up and that s/he had to be 100% sure of the identification. Cashman picked out Magnum and stated that s/he was completely sure. I made no comment.

Upon the strength of this information I obtained a warrant for the arrest of Magnum. I went to his/her apartment and arrested him/her. This took place on October 31<sup>st</sup>, Hallowe'en night. While searching the immediate area, I saw a bag with stains on it which was submitted to the Centre For Forensic Sciences for analysis. Unfortunately, the results of the testing were inconclusive.

When I arrested Magnum, s/he said "you've got to be kidding. I didn't do anything. You can ask my fiancé(e). S/he was here with me".

## **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 apartment.

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. KIM MAGNUM**

### **Description of Witness**

Kim Magnum, the accused in this case, is 30 years old. S/he has a grade 11 education and has worked at a variety of jobs as a labourer since then. Five years ago, Kim developed a drug problem and was threatened by pushers. In order to try to pay off his/her debt to them, s/he robbed a convenience store at knife point. However, s/he was quickly apprehended by the Yourtown police. Officer Gumshoe was marginally involved in that case transporting Kim from the location of the arrest to the police division. Kim co-operated with the authorities, revealed the names of the pushers and as a result received a one year sentence with probation. Kim swears that s/he has gone straight since that brush with the law and secured a job as a building superintendent a year ago. S/he is well regarded by the management and has shown no signs of difficulty.

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

I remember being arrested by the police and charged with this crime. I told the cop right away that I did not do it, but typically the cop would not believe me. I know that I have a record, but I have gone completely straight since then. I have not touched dope since before I was sentenced on the other robbery. I drink a bit and sometimes go to the track, but nothing else that would cause any cop to look sideways at me.

I remember October 1<sup>st</sup>. I know because September 27<sup>th</sup> is my birthday and my fiancé(e), Leslie Creemore, and I had gone out for a nice dinner. This was only a few days later.

I work as a building superintendent/maintenance worker. The management does not require me to keep logs of my time or work, just as long as I get everything done. If I spend the company's money, then I have to produce receipts or put it on a company account.

I was with my fiancé all day on the 1<sup>st</sup> of October. I am sure of this. Leslie is going to move in with me soon and the management has indicated that they could have a position for him/her as well. I had done the usual cleaning while Leslie was preparing things in the apartment. I realized I needed a couple of O rings and some other plumbing supplies for some work in one of the apartments. This was about 3:00 p.m. I went to the Plumbers' Supply store, where the company has an account. When I got there, I found that it had closed early that day. There was a note on the door, but I can't recall now what it said.

I was gone for probably 45 minutes and went directly back to work. I had told Leslie that I was going to be gone for a bit to get the supplies. S/he offered me a lift (s/he drives, I don't) but I thought a little walk on a nice day would be okay. I told her when I got back. That bank is a good half hour walk away from the building (I guess you could do it in 20 minutes if you were moving fast) but it is the other direction from the plumbing store I went to.

On the Sunday just before October 1<sup>st</sup>, one of my friends and I went to the track. Leslie

did not go as s/he thinks the track is not much fun. S/he is a hockey nut. Anyways, I did win about \$500 that day. I think I told Leslie about this, but I am not too sure.

When the cop came and arrested me s/he asked about a bag that was in the apartment that had some stains on it. I think it was one of the canvas bags I often use to hold plumbing parts or similar things in while I am doing work in the units. These bags are cheap and that way things do not get lost. The bags get dirty, but if I just use them for parts, it does not matter.

I did not commit this offence. I told the cops that.

## **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. It is up to the defence as to whether they will want to lead any evidence of the background problems that Kim had some time ago. However, the defence may want to do so if they feel it will help show Kim is now a different person and can provide an explanation for any actions s/he has now undertaken.

Kim has a criminal record. The defence need not lead this as part of their case, but the Crown can cross-examine Kim on the fact of the conviction and the sentence received. The Crown cannot ask for details about the events of the prior robbery, but the defence can lead them if they think this is helpful.

Kim gave an immediate statement to the police about this case. Does the defence wish to lead this to show Kim is being consistent or will the Crown lead it, even though it may hurt the Crown case?

## **R. v. KIM MAGNUM**

### **Description of Witness**

Leslie Creemore is Kim Magnum's fiancé(e). Leslie has no criminal record and has a high school education. S/he met Kim when Kim was working on a job site near Leslie's previous place of employment. They began dating and became engaged six months ago. Leslie has a good chance of working with Kim in the building where Kim works. This is a relief for Leslie as s/he lost her last job when the company's board of directors stole funds, leaving everyone else to fend for themselves. Leslie is very devoted to Kim and has told friends that s/he would do anything for her/his fiancé(e).

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

My name is Leslie Creemore. I am thirty years old and have a high school education. I met Kim Magnum a couple of years ago and we became engaged six months ago.

I was with Kim all day on the 1<sup>st</sup> of October. I was doing stuff around the apartment while Kim was doing chores and such. In the afternoon, I heard Kim say that s/he needed to go to the store for something. I offered to give him/her a ride, but Kim said it was okay. I went back to what I was doing.

Maybe half an hour or so later Kim came back. I saw him/her pass by the window and I guess s/he went right back to the job s/he was doing. I did not notice anything unusual.

I remember the cops arresting Kim. It was Hallowe'en night and we were getting things ready for the apartment building kids. I was floored when the cop said what was going on. That cop would not let me speak to Kim and would not let me tell what I knew. The cop just took Kim away.

I know about October 1<sup>st</sup> because Kim and I had just gone out for his/her birthday a few days before. I also know where that bank was because I used to work around the corner from it. It is about eight blocks or so from the apartment. You would have to walk pretty fast to make it there and back in a half hour.

I know Kim had a few extra bucks after October 1<sup>st</sup>, but it was only a bit of money. I know this because when Kim and I were out, s/he went to a couple of people and said that s/he could repay the money s/he owed them. I saw this, but it was ten or twenty dollars. Kim always pays his/her debts. I would think the total I saw being paid was a couple of hundred dollars at the most.

One of the things that really bothers me about all this is that the cops just would not listen to me. I could have told them everything right at the start.

## **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 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 engaged to Kim.