

IN THE SUPERIOR COURT OF JUSTICE

CANADA)	HER MAJESTY THE QUEEN
)	
PROVINCE OF NOVA SCOTIA)	against
)	
HALIFAX COUNTY)	CARSON BEANCOUNTER

1. Carson Beancounter stands charged that he, on or about the 1st day of July in the year 2008, at the City of Halifax in the Halifax County, did unlawfully kill Donald Deadduck and did thereby commit second degree murder on the person of Donald Deadduck, contrary to the Criminal Code;

DATED AT HALIFAX this 10th day of June, 2009.

..... Assistant Crown Attorney and
Agent for the Attorney General of Nova Scotia

The Attorney General of Nova Scotia
consents to this charge being tried
by a Superior Court Justice and jury.

Johnny Bowwow, Q.C.
Deputy Attorney General of Nova Scotia

R. v. BEANCOUNTER – Molly McFelon

Description of Witness

Molly McFelon is a high school student at Sackville High School and is in Grade 11. She is seventeen. McFelon has often been in trouble with the school authorities, but this was usually for skipping classes or not having assignments done. She was twice suspended for damaging school property. The damage was minor and McFelon performed community service at the school to pay off the equivalent value of the damage. Lately, McFelon has been doing much better and has determined that she will go to University to study architecture. Her grades have improved. Nonetheless, McFelon's parents still are concerned about her and in particular about her chumming around with Donald Deadduck, the deceased. McFelon's parents have always thought of Donald as a trouble maker with a big mouth. Whenever McFelon was in trouble, Donald was around. Donald had a Youth Court record for assault and threatening. Both charges involved other students.

Anticipated evidence of the Witness

My name is Molly McFelon and I am 17. I am a student at Sackville High School and in Grade 11. I admit that I have been in trouble before, but nothing serious, just kid stuff. I was in a school co-op program last term and got to go and work in an office. It was the Joshua Company of Architects. I loved it there and saw things differently after that. The money that those guys made was incredible. So, I decided that I would buckle down and study harder. I could see that education was the way to go and if I was going to get into Dalhousie University. I had to do a lot better.

I'll never forget that night. Donny and I were going to going to the movies. I think Death Wish 97 was playing. Things got blowed up real good in that one. After the movies we went down to the school to see if anyone was around to shoot some hoops and met up with some of the school gang. It was not a gang like a criminal gang, just some guys chilling. They had a two four so we each had a couple of beers. Then Donny and I were going by the river to see if anyone was having a late night barbeque. It was the Canada Day weekend so no one was in school and we figured it might be fun. No one was there. We were walking and Donny said he wanted to see some shack at the top of the hill. We went up and it looked like it was open so we just went to take a look inside. We were just curious, we weren't going to take anything. Then I heard someone yelling get out of there. He was mad. He kept yelling. I was scared but Donny said to me just be cool. I was about ten feet behind Donny. He started walking to the door and this person was still yelling. So, Donny said "I am coming out, I'm gonna..." and then it happened. I saw the bat swing and hit Donny. He just collapsed, like he had been shot or something. I will never forget that sound. It was horrible. I think I froze for a minute or so. I think I vomited. Then I ran out the door past where Donny was lying. I did not see anyone else right there, but I did see the accused person walking back to a place which I guess was his house. He was just walking back. I just ran and kept running right back home.

I told my parents what had happened and they called 911. I told the police all about things and I don't know what else was going on. I told the cops where we were and even took a police officer in uniform to the area. I did not know the street address but could describe it. I

later saw the accused in the back of a police cruiser and I know it is the same person that is before the court.

I did not suffer any physical injuries, but I have been seeing the school counsellor and a psychologist to help get over this. We were just having some fun that night. Donny didn't deserve to die.

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.

R. v. BEANCOUNTER – Sherlock Poirot

Description of Witness

Sherlock Poirot is a member of the RCMP holding the rank of Detective Sergeant. He has been a police officer for twenty-five years and has worked in the homicide squad for the last ten years. In that capacity, Det/Sgt. Poirot has conducted some forty homicide investigations. He has been qualified as an expert crime scene investigator.

Anticipated evidence of the Witness

On July 1, 2006, I was coming into the office just to check my voice and e-mails before taking the long weekend off. There had been some trouble at the Royal Bank so the homicide squad officers that were supposed to be on duty had gone to assist with that. I was the only one in the office when I took the call from Officer Freshface and Sergeant Flatfoot of the Community Safety Unit. They indicated that the body of a male, late teens, had been found in a field by a garage near the river bank close to the intersection of River and Spruce Streets. I instructed them to contain the scene and proceeded there.

The Forensic Identification Unit had already cordoned off the area when I arrived. I proceeded to the location of the body and observed a male, approximately seventeen years, lying on his back. His arms were outstretched. He had suffered an obvious trauma to his face, specifically the forehead area. The face was caked in blood, but the skull had not been shattered. This person was obviously dead (the coroner had pronounced him dead in my presence) so I instructed the forensic unit to effect a cordon of the area and begin testing. No unauthorized person was allowed near the scene.

I also instructed uniform officers to begin a quadrant search for any item that may be connected with the event. Almost immediately, Officer Catchem called to me that s/he had located a baseball bat which could be connected to the scene. I walked approximately ten metres northwest from the body and saw a Louisville Slugger hardwood bat with blood on it. I ordered the uniformed officer to seize this.

I noticed that a further ten metres in the same direction was a two storey house which may have been on the same property as the garage. I now know this to be the case. I went to the door to make inquiries. The door was answered by the now accused person. I was identifying myself with my badge and warrant card when he said "I know why you are here. I didn't want to hurt the kid, but I was really scared. He said he had a gun".

I immediately cautioned the accused and gave him/her the right to counsel. He said that he would call his lawyer from inside, if that was alright. I dialled the number for him. I informed counsel of the situation and made arrangements to have counsel meet the accused at the homicide squad offices.

At all times I was with a uniformed officer. I noticed when we entered the house to allow the accused to make the telephone call that there were two properly stored long rifles with trigger locks in a secure cabinet. These were seized as well for public safety reasons. Although we noticed the rifles, it was not necessary to draw our service pistols.

The accused was co-operative and appeared slightly disoriented. He had obviously been drinking some hours before, but it was not possible to tell precisely the amount consumed or when. I also noted an open bottle of Lagavulin 16 year old single malt scotch on a table, with two glasses. Both had some whiskey in them. The bottle was approximately 3/4 full. Another person was present in the house. I asked a uniformed officer to take a statement from that person. They left and I had no further contact with them.

With the uniformed officer, I took the now accused person to a scout car to transport them to the station. I put the suspect in the back of the car. I also took a statement from a young person who had indicated witnessing the event. After this, the usual investigation, preparation, disclosure and other procedures were followed for this accused.

Helpful Suggestions

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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 area near the body.

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. BEANCOUNTER – Carson Beancounter

Description of Witness

Carson Beancounter, the accused in this case, is 45 years old. He is a Chartered Accountant and is self-employed. S/he is married with two children, ages seven and nine. The accused has no criminal record and is involved in the Neighbourhood Watch Program, which is designed to deter crime in communities as well as several environmental organizations.

Anticipated evidence of the Witness

On July 1st, my partner and I were getting ready for a hunting trip. We were going to leave the next day. It was for small game, so we were just going to take the .22 rifle and the .410 shotgun. They were stored in the gun cabinet.

Kim, my partner, had come over around five. The spouse and the kids had gone to see the in-laws for the weekend, so we were going to have a barbeque and get the equipment ready for the trip. I have a lot of camping equipment, but we had to make sure it was ready to go and load up the SUV so we could get an early start. We ate around seven and had several beers.

We were not going to be driving, so it didn't matter. I honestly cannot say how much I had to drink. I know that I would not have even considered driving in that condition. About 11:00 I heard something out near the garage. We have had that broken into before and that is how I got involved with Neighbourhood Watch. There was some pretty valuable stuff in there because we had put all the camping supplies in there and some of it was new. In particular there was a new Coleman stove and a GPS locator. I had been hearing things in the press about burglaries in the area and that it was likely the work of a gang of young people. Some of the houses that were broken into were trashed. I didn't want anything like that to happen. I guess I was pretty mad at that moment.

If there was a bunch of kids, I thought I should take something to run them off. I grabbed a bat from the basement. Kim was saying that we should call the cops and I said okay, go ahead. But you know it will take them forever to get here and I don't want the place broken into. So, I went out to the garage and heard some people rummaging around in there. It was dark, there was only the lights from the house on, so it was hard to see. The garage light had burned out the night before.

I heard them and told them to get out of there. I was yelling to scare them. I am not really sure what happened, but one of them said he was coming out and just as he got to the door he said "I got a gun". I was terrified. I never thought that could have happened. If I did, I would have just stayed inside and called the cops. I was not thinking. I heard that and I swung the bat. I know that I hit him, but do not even know where. I just ran back to the house. I guess I threw the bat away.

I just went in and sat down. Kim was there and she was saying what happened. I couldn't speak. I don't know how much time went by, but I heard a knock at the door. I saw a police officer there. I told him what had happened, I think, and he told me I had better call my lawyer. I did that and was taken to the police station. Everything was spinning around then, but I do remember at least that much of what occurred.

I asked if the kid was going to be okay. A cop told me he was dead. I broke down then. I remember weeping in the cell at the station. I never wanted this to happen, I was just trying to scare them away.

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. BEANCOUNTER – Kim Corroborator

Description of Witness

Kim Corroborator is Beancounter's partner. She has no criminal record and is also a Chartered Accountant. She is married with a teenage son.

Anticipated evidence of the Witness

My name is Kim Corroborator. I am forty -seven years old and am a C. A. I am Carson Beancounter's business partner. We formed our accounting firm five years ago and have become good friends in the time since then.

We had planned a hunting trip to start on the Canada weekend. It was a Saturday. We decided that the roads would be clogged so we would travel on the Sunday instead. I got to Carson's about 4:00 or 5:00 in the afternoon. We were putting together the hunting/camping supplies. That did not take all that long. Some were put in the garage, some in the SUV and some were in the basement. The guns were prepared and Carson kept them in the secure cabinet with the trigger locks on. He is very cautious about guns.

We did that and had a barbeque. Both of us had several beers, three or four I think. We were not drunk. We watched the 10:00 o'clock news and Carson brought out some scotch. S/he is more of a drinker than I am but we both had a couple. About 11:00 I heard something outside and wondered what it could be. I asked Carson. He said it must be those damned kids who have been breaking into places. He was pretty mad. I said lets call the cops and Carson said sure, but it would take forever to get them here, so he grabbed a bat from the basement and went out. I could hear some yelling from where I was and I called 911 about the break and enter.

The next thing I knew Carson had come back in. He was in a real state. I don't know just how to describe it. It was a combination of anger, shock, fear, sort of everything mixed up. He said I think I hurt a kid. Then he sat down and stared off into space. A few minutes passed and he started saying, over and over, why did I hit that kid? Why did I do it?

Then there was a knock at the door and Carson got up to answer it. A police officer or two was there, or maybe more. I know that there was at least one in a suit and one in uniform. I wasn't concentrating on the cops. Carson was taken out in handcuffs.

I put up the bail for Carson. It was \$100,000 with no deposit. I know that Carson did not mean to hurt the boy. I have a sixteen year old myself and he and Carson have always gotten along well. I have tried to ask Carson about the case, but he just says that my lawyer says I can't talk about it and starts weeping.

I really feel bad for that kid's family. If only Carson had not gone out that night to the garage that kid would be alive.

Helpful Suggestions

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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 a friend of the accused.

NOTICE TO MOCK TRIAL PARTICIPANTS

The problem in this mock trial is a second degree murder 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 youth who was with the deceased as well as the detective. Under Canadian law, in order to obtain a conviction for murder, the Crown must prove that the accused intended to kill a person or intended to cause the deceased bodily harm which the accused knew was likely to cause death and be reckless whether death ensues or not.
2. The participants should be aware of the state of mind of the accused in putting forward a defence of self defence or defence of property. The law recognizes that an accused person may be mistaken in what they believe is occurring before they defend themselves. However, the more unreasonable their belief, that is the farther away it is from other known facts or what is objectively accepted, the less likely it is that a person honestly believed what they are claiming.
3. Self defence is a very complex area of the law and often gives lawyers and judges much difficulty. Student participants are not expected to have a full knowledge of this area.
4. A pathologist's report is included in the instructions. In order to simplify the case, it is to be agreed on as evidence without the need to call the doctor.
5. The relevant sections of the Criminal Code are reproduced below.
6. Participants are to assume that the Canadian Charter of Rights and Freedoms has been complied with.
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. In this case, if the Crown cannot prove the offence of murder, it may still prove the offence of manslaughter. In that case, the judge will have to be satisfied that the accused caused the death of the deceased, the accused's defences have been disproven beyond a reasonable doubt, the acts of the accused were deliberate (as opposed to accidental) and criminally blameworthy.

GOOD LUCK TO ALL!

RELEVANT LAW

CRIMINAL CODE PROVISIONS

- 34(2) Every one who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if
- a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and
 - b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.
- 37(1) Every one is justified in using force to defend himself or any one under his protection from assault if he uses no more force than is necessary to prevent the assault or the repetition of it.
40. Every one who is in peaceable possession of a dwelling house, and every one lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly entering into or forcibly entering the dwelling house without lawful authority.
- 41(1) Every one who is in peaceable possession of a dwelling house or real property and every one lawfully assisting him or acting under her authority, is justified in using force to prevent any person from trespassing on the dwelling house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.
- 41 (2) A trespasser who resists an attempt by a person who is in peaceable possession of a dwelling house or real property, or a person lawfully assisting him or acting under his authority to prevent his entry or to remove him, shall be deemed to commit an assault without justification or provocation.
- 229 Culpable homicide is murder
- a) where the person who causes the death of a human being
 - i) means to cause his death, or
 - ii) means to cause him bodily harm that he knows is likely to cause his death and is reckless whether death ensues or not.
- 232 (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.
- 232 (2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.

PATHOLOGIST'S REPORT

On the second day of July, 2008, I had the performed an autopsy on the deceased, Donald Deadduck.

The deceased was a 17 year old male, 185 cm. in height and weighing 90 kilos. A full autopsy with respect to the organs of the deceased was performed (omitted from this report).

The deceased had a blood alcohol level of .08, the level which is deemed unlawful for the operation of an automobile. The level of alcohol does not reveal impairment levels necessarily nor could it be determined when the deceased last consumed alcohol.

The examination of the forehead of the deceased revealed a major trauma to the frontal area. The skull was not fractured but had been hit by a blunt object with great force. It would appear that there was only one contact with the blunt object. Removal of the brain revealed major blunt force trauma to the front of the brain consistent with the impact of the blunt object at the forehead. Further trauma was detected at the back of the brain, which would be consistent with the force of the object forcing the brain suddenly to the back of the skull. Significant force would be required to effect this.

The result of this was trauma to the frontal and posterior sections of the brain with massive haemorrhaging. The decease was likely rendered unconscious upon contact. Death would have occurred with ten minutes of the injury. It is very unlikely that the deceased regained consciousness.

Thus, the cause of death was massive cranial haemorrhaging.

I. C. Cadavers, M.D., F.R.S.C.