

their blandishments. How difficult, if not impossible, it is for jurors to appreciate the polished and practiced facility with which they deliver false testimony. Jailhouse informants are, indeed, a dangerous group. Their testimony can all too easily destroy any hope of holding a fair trial and severely tarnish the reputation of Canadian justice.

The jury at Mr. Assoun's trial was not warned of these dangers by the trial judge – the Court of Appeal would conclude this was not an error – and they were unlikely to have appreciated them without such an instruction.

Report of the Inquiry Regarding Thomas Sophonow, Applicant's Record, Part VIII, Volume 4, Tab 1, pp. 69-70 ("Sophonow Report")

R. v. Assoun, 2006 NSCA 47, Applicant's Record, Part VIII, Volume 1, Tab 1, paras. 152-158

(i) Carvery's Account of Glen's Confession

105. David Carvery, age 36 at the time of Mr. Assoun's trial, was in the Halifax County Correctional Centre awaiting his trial on charges of drug trafficking and possession of the proceeds of crime. He gave his first statement to the police on May 18, 1998. He told them that days earlier Mr. Assoun had confessed to him that he had killed Brenda Way. Carvery said:

- Q. And do you recall any conversation with Mr. Assoun during that time?
 A. Yes, I do. It happened when we was watching the television. It was the news that came on T.V. about a body being found on the Cherrybrook Road. I don't know if it was a prostitute, but it was a lady's body found on the Cherrybrook Road. And Mr. Assoun said to me when the news was on there, he said, Whoever dumped that body there was a very smart murderer. And I asked him why would he say that. And he told me, Because that's what I did to my ex-girlfriend. I killed her and dumped her body.
- Q. Okay. And what did you say at that point?
 A. Well, I told him he should watch what he says to people because if not, somebody might try to rat him out on this. And he told me, well, I don't believe you would because there's a gentleman by the name of Wade Parsons that was on the block with us and he was pretty heavy. And he told me, well, if you would do that, he wouldn't be talking to me.
- Q. And what did he say at that point?
 A. Well, at that point, he told me what he did.
- Q. Okay. And what did he tell you?
 A. Well, he told me how he killed his girlfriend and he ditched her body by a dumpster in Dartmouth.
- Q. Did he tell you how he killed her?
 A. Well, he told me he drove around, slit her throat, and dumped her body by a dumpster.
- Q. Did he say why he killed her?
 A. Well, he was very upset with her and he was trying to get back with her. She

was a prostitute and how she was using crack cocaine and how she was drinking a lot.

Evidence of David Carvery, Trial Transcript, *Applicant's Record*, Part II, Volume 10, Tab 3, pp. 3201-03

106. Carvery described how he had communicated his story to the police:

- A. I contacted – well, my girlfriend came to visit me at the Halifax County Correctional Centre and I was telling her about that there was a guy that was in here for murder in Dartmouth. And she told me, well, that was a friend of her sister that got murdered. And then I told her, well, what you should do is contact your friend and let her know that I know something about what happened and that she can get in contact with the investigation officer who want to come and see me at the Halifax County Correctional Centre.
- Q. And did you know the sister's name?
- A. No, I don't. Well, I know her name is Janey, but I didn't know her.
- Q. And after this conversation with your girlfriend, did you have occasion to speak to the police?
- A. Yes, I did.
- Q. And when was that?
- A. That was probably around May 18th, 1998.³⁴

This meant that Carvery had a line of communication with Brenda Way's family before he first formulated his account and provided it to the authorities.

Evidence of David Carvery, Trial Transcript, *Applicant's Record*, Part II, Volume 10, Tab 3, pp. 3203-04

(ii) Carvery's Deal with the Crown

107. Carvery claimed that he was motivated to testify by revulsion at Mr. Assoun's crime: "My conscience wouldn't let me live with it. That's why I came forth." He said that he gave his May 18, 1998 statement "without a deal even being talked about."³⁵

Evidence of David Carvery, Trial Transcript, *Applicant's Record*, Part II, Volume 10, Tab 3, pp. 3214-15

³⁴ Carvery's girlfriend did not testify. We are unaware of any statement she may have given or any investigation conducted into her role in Carvery's becoming a witness.

³⁵ This claim by Carvery is discussed in the next Part.



Department of Justice
Canada

Atlantic Regional Office
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

Ministère de la Justice
Canada

Bureau régional de l'Atlantique
Pièce 1400, Tour Duke
5251, rue Duke
Halifax, Nouvelle Écosse B3J 1P3

Telephone: 902-426-6995
Telecopier: 902-426-7274
E-Mail: ray.mitchell@justice.x400.gc.ca

Our File: AR-1-44298
Notre dossier:

Your file:
Votre dossier:

December 9, 1998

Mr. David Carvery
c/o Mr. Donald L. Presse
Presse & Mason Law Office
Canada Trust Court
210-1475 Bedford Highway
Bedford, Nova Scotia
B4A 3Z5

Dear Mr. Carvery:

Re: Agreement to co-operate

You presently stand charged in the Supreme Court of Nova Scotia with the following offences:

1. Trafficking in cocaine between July 21 and July 24, 1997 contrary to section 5(1) of the Controlled Drugs and Substances Act;
2. Two counts of trafficking in cocaine on April 6, 1998, contrary to section 4(1) of the Narcotic Control Act; and
3. Possession of proceeds of crime on April 6, 1997, contrary to section 19.9 of the Narcotic Control Act.

We confirm that you have agreed to co-operate with the police and the prosecution respecting the second degree murder charge against Glen Assoun.

You agreed to provide to the police and the Crown any necessary statements and in particular you will provide a sworn, video taped statement concerning your knowledge of this case.

You agree to testify truthfully in all court proceedings as to your knowledge of any involvement of Glen Assoun in the murder of Brenda Way.

In return for your co-operation as outlined in this letter, your charges will be dealt with as follows:

1. The Crown will enter a stay of proceedings on the trafficking charge of July 22-24, 1997;

Canada

2. You will enter a plea of guilty to one offence of trafficking on April 6, 1997; and
3. The Crown will enter a stay of proceedings to the possession of proceeds of crime charge alleged to have occurred on April 6, 1997.

In exchange for your co-operation you will receive a total sentence of two years incarceration followed by a three year period of probation upon release. You will receive credit for the time you have spent on remand in custody on these charges.

Your period of probation will include the following conditions:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or the probation officer in advance of any change of name or address, and promptly notify the court of any change of employment or occupation.
4. Upon release from custody, report within one week to probation services and thereafter when required to do so by probation services; and
5. Upon release from custody, report within one week to the front desk of the Halifax Regional Police Service at 1975 Gottingen Street in the Halifax Regional Municipality, and thereafter on each Friday, until the last Friday of August, 1999.

Should you not uphold your obligations under this agreement, the Crown will reinstitute all charges against you, and upon conviction will seek what the Crown feels is an appropriate range of sentence.

Yours truly,

Ramitchell

Raymond Mitchell
Counsel - Proceeds of Crime Unit
Criminal Prosecutions Section

cc: Dennis Theamen, Crown Attorney
Don Presse, Defence Counsel
Cst. Dave MacDonald, Halifax Regional Police Service
Cst. Paul Mellon, RCMP Drug Taskforce

Acknowledged by:

David Carvery

David Carvery

Don Presse

Witness

Nov 11, 1998

Date