

Her Majesty the Queen, as represented by the Office of the Director of Public Prosecutions  
(appellant) v. Roxanne Nicole Crain (respondent)  
(CACR1887; 2012 SKCA 8)

**Indexed As: R. v. Crain (R.N.)**

Saskatchewan Court of Appeal  
Lane, Richards and Ottenbreit, J.J.A.  
February 1, 2012.

**Summary:**

The accused was charged with trafficking in cocaine. The trial judge granted the accused's motion to discharge the charge. The Crown appealed.

The Saskatchewan Court of Appeal allowed the appeal and ordered a new trial.

**Narcotic Control - Topic 702**

Offences - Trafficking - Elements of - The accused offered to sell cocaine to an off-duty police officer (Corporal Stevenson) - She was arrested and a white powder was found in her possession - It was not cocaine - The accused was charged with "unlawfully traffic[ing] in a controlled substance, to wit: cocaine." (Controlled Drugs and Substances Act, s. 5(1)) - The trial judge dismissed the charge on the basis that the Crown had not proven the offence charged and the charge was defective - The Crown appealed - At issue was whether, given the wording of the indictment, the Crown was required to prove that the accused was offering to sell a substance that was, in fact, cocaine - The Saskatchewan Court of Appeal allowed the appeal and ordered a new trial - The offence of trafficking was committed by the accused if (a) she offered to sell Corporal Stevenson cocaine (the actus reus of trafficking by offer), and (b) she intended that he take the offer to be genuine (the mens rea of trafficking by offer) - If those two points could be proven, s. 5(1) was contravened and the accused was guilty as charged - It was not necessary for the Crown to go further and demonstrate that the powder in the accused's possession was, in fact, cocaine - That question was not relevant to the adjudication of her criminal liability.

**Narcotic Control - Topic 706**

Offences - Trafficking - Offer - [See **Narcotic Control - Topic 702**].

**Narcotic Control - Topic 717.1**

Offences - Trafficking - Defences - Substance not narcotic - [See **Narcotic Control - Topic 702**].

**Cases Noticed:**

R. v. Mamchur, [1978] 4 W.W.R. 481 (Sask. C.A.), refd to. [para. 22].

R. v. Jones (1989), 74 Sask.R. 4 (C.A.), refd to. [para. 22].

R. v. Campbell (J.) and Shirose (S.), [1999] 1 S.C.R. 565; 237 N.R. 86; 119 O.A.C. 201, refd to. [para. 23].

R. v. Murdock (K.P.) (2003), 173 O.A.C. 171; 176 C.C.C.(3d) 232 (C.A.), rehd to. [para. 24].  
R. v. Petrie, [1947] O.W.N. 601 (C.A.), rehd to. [para. 25].  
R. v. Sherman, [1977] 5 W.W.R. 283 (B.C.C.A.), rehd to. [para. 25].  
R. v. Reid (J.W.) (1996), 155 N.S.R.(2d) 368; 457 A.P.R. 368 (C.A.), rehd to. [para. 25].  
R. v. Brown (1953), 9 W.W.R.(N.S.) 701 (B.C.C.A.), rehd to. [para. 25].  
R. v. N.C. (1991), 35 Q.A.C. 1; 64 C.C.C.(3d) 45 (C.A.), dist. [para. 28].  
R. v. Rooke and De Vries, [1990] 1 S.C.R. 1020; 108 N.R. 234, rehd to. [para. 29].  
R. v. Saunders - see R. v. Rooke and De Vries.  
R. v. J.J.D., [2003] 2 W.W.R. 497; 2002 SKQB 270, rehd to. [para. 29].  
R. v. MacPherson (M.T.) et al., [2005] B.C.T.C. 381; 2005 BCSC 381, rehd to. [para. 29].

**Statutes Noticed:**

Controlled Drugs and Substances Act, S.C. 1996, c. 19, sect. 2(1) [para. 15]; sect. 5(1) [para. 13].

**Counsel:**

Wade E. McBride, for the Crown;  
Kim M. Armstrong, for the respondent.

This appeal was heard on September 20, 2011, by Lane, Richards and Ottenbreit, J.J.A., of the Saskatchewan Court of Appeal. The following judgment of the Court of Appeal was delivered by Richards, J.A., on February 1, 2012.

Appeal allowed;  
new trial ordered.

Editor: Anick Ouellette-Levesque

**Narcotic Control - Topic 706**

Offences - Trafficking - Offer - The accused offered to sell cocaine to an off-duty police officer (Corporal Stevenson) - She was arrested and a white powder was found in her possession - It was not cocaine - The accused was charged with "unlawfully traffic[ing] in a controlled substance, to wit: cocaine." (Controlled Drugs and Substances Act, s. 5(1)) - The trial judge dismissed the charge on the basis that the Crown had not proven the offence charged and the charge was defective - The Crown appealed - At issue was whether, given the wording of the indictment, the Crown was required to prove that the accused was offering to sell a substance that was, in fact, cocaine - The Saskatchewan Court of Appeal allowed the appeal and ordered a new trial - The offence of trafficking was committed by the accused if (a) she offered to sell Corporal Stevenson cocaine (the actus reus of trafficking by offer), and (b) she intended that he take the offer to be genuine (the mens rea of trafficking by offer) - If those two points could be proven, s. 5(1) was contravened and the accused was guilty as charged - It was not necessary for the Crown to go further and demonstrate that the powder in the accused's possession was, in fact, cocaine - That question was not relevant to the adjudication of her criminal liability.

### **Narcotic Control - Topic 717.1**

Offences - Trafficking - Defences - Substance not narcotic - The accused offered to sell cocaine to an off-duty police officer (Corporal Stevenson) - She was arrested and a white powder was found in her possession - It was not cocaine - The accused was charged with "unlawfully traffic[king] in a controlled substance, to wit: cocaine." (Controlled Drugs and Substances Act, s. 5(1)) - The trial judge dismissed the charge on the basis that the Crown had not proven the offence charged and the charge was defective - The Crown appealed - At issue was whether, given the wording of the indictment, the Crown was required to prove that the accused was offering to sell a substance that was, in fact, cocaine - The Saskatchewan Court of Appeal allowed the appeal and ordered a new trial - The offence of trafficking was committed by the accused if (a) she offered to sell Corporal Stevenson cocaine (the actus reus of trafficking by offer), and (b) she intended that he take the offer to be genuine (the mens rea of trafficking by offer) - If those two points could be proven, s. 5(1) was contravened and the accused was guilty as charged - It was not necessary for the Crown to go further and demonstrate that the powder in the accused's possession was, in fact, cocaine - That question was not relevant to the adjudication of her criminal liability.