

IN THE COURT OF SHAKESPEARE

Matter No. 4/ 2005
Hearing Date 10/11/2005

Gaston Laird

Appellant

v.

Her Majesty the Queen

Respondent

FACTUM OF THE APPELLANT

Claire Ezzeddin
Counsel for the Appellant

Karen Oberer
Counsel for the Appellant

INDEX

PART I – FACTS	.....2
PART II – ISSUES	.....3
PART III – ARGUMENTS	.....4
1. The Exclusion of Evidence from the consideration of the jury is justified by the law of Shakespeare	.....4
2. The jury or judge has a direct responsibility to the accused analogous to the responsibility characters owe to each other under the law of Shakespeare	.....4
3. According to the law of Shakespeare, the concept of ‘character’ or personality is nothing more than an inference drawn from circumstantial evidence.	.....5
4. According to the law of Shakespeare, a characters present actions are not reliably predictive of their future actions	.....6
5. The law of Shakespeare shows us that reputation is a particularly unreliable measure of character and predictor of future behaviour.	.....8
6. Social Roles cannot be seen as determinative of behaviour according to the law of Shakespeare.	.....9
7. The legitimacy of the judgments of the Court of Shakespeare depends upon the exclusion of evidence of prior behaviour	.....10
8. The law of Shakespeare states that a change in behaviour productive for the community should be rewarded with praise, not suspicion.	.....10
9. The law of Shakespeare attests to the powerful prejudicial effect and significant persuasive power of evidence of past behaviour as it invokes inferences of character.	.....11
10. According to the law of Shakespeare, in the drawing of an inference from a pool of circumstantial evidence we cannot know the relative weight and influence of each piece of circumstantial evidence	.....12
11. The law of Shakespeare warns of the dangers of drawing conclusions from a pool of circumstantial evidence which may include inaccurate prejudicial or fraudulently manipulated evidence.	.....13
PART IV – ORDERS SOUGHT	.....15
PART V – AUTHORITIES	.....16

PART I - FACTS

Gaston Laird, appellant, is appealing to the Court of Shakespeare seeking to have his conviction for the murder of Tristan King overturned. Laird argues that his conviction was based on the admission of prejudicial evidence – namely, evidence of a prior conviction for aggravated assault

Tristan King, CEO of Shakespeare Scansion and Suspension, a multinational manufacturer of auto parts and iambic pentameter verse, was found beaten to death in the suite of his offices on the morning of March 16th, 2000. Gaston Laird was CFO of Shakespeare Scansion and Suspension at the time of King's death, and he became CEO thereafter. Since Laird assumed the helm, Shakespeare Scansion and Suspension has transformed from sluggish giant to lean and profitable organization

PART II - ISSUES

Mr. Laird has appealed to the Court of Shakespeare on the following questions:

- 1) Is character evidence or evidence of a prior conviction admissible in a criminal trial according to the laws of Shakespeare?

- 2) If the law of Shakespeare declares such evidence inadmissible, is a retrial necessary?

PART III - ARGUMENTS

1. The Exclusion of Evidence from the consideration of the jury is justified by the law of Shakespeare

For the audience or reader of Shakespeare's work, rules of admissibility of evidence related to characters have already been set by the author, influenced by restrictions of genre and form and other considerations that are beyond our ability to identify. The author chooses what we see, who we see, when we see them, whose inner dialogues we are privy to; the author constructs an evidentiary world within which we are bound. While we gain the privilege of hearing Hal express his thoughts in soliloquy, we are cheated of the same privileged access to Kate after she has been tamed by Petruchio; we overhear Iago's scheming, but we do not have enough information from which to draw unassailable conclusions about Cleopatra's behaviour. The reader approaches a closed textual world, fertile with possible interpretations and potential inferences to be drawn, but essentially fixed and bounded in terms of its literal content or word count. The court of Shakespeare faces the challenge faced by the author of the law of Shakespeare itself; where should the boundary lie in the creation of a pool of evidence from which an inference may be drawn? Or, in the alternative, should such a pool be left open to any and all information available without shaping or manipulation? This second option is not an option available to Shakespeare, who could not have and would not have desired to stage a never ending play, nor is it available to the court of Shakespeare, which cannot delay judgment eternally while awaiting the results of an impossibly complete fact finding mission. At some point, a boundary must be drawn in time and space in terms of what evidence is considered most relevant to the project at hand, whether it is an aesthetic project, or a project of legal judgment. The law of Shakespeare thus shows us that the exclusion of evidence is not only allowable, but that it is also inevitable. Where the exclusion of evidence in the law of Shakespeare may be interpreted as serving a broad range of purposes, from the aesthetic to the generic, to the dramatic, the exclusion of evidence in the Court of Shakespeare serves a higher purpose still; it serves the goal of just decision making which justifies and legitimizes the very existence of the Court.

I Henry IV

II Henry IV

The Taming of the Shrew

Anthony and Cleopatra

2. The jury or judge has a direct responsibility to the accused analogous to the responsibility characters owe to each other under the law of Shakespeare

The Court of Shakespeare has already established that the law of Shakespeare recognizes the "idea of responsibility or duty deriving from a specific relationship of authority and dependence" and the importance of taking responsibility for one's own actions, including one's judgments. The admission of the prior conviction in the trial of the case at bar suggests an analogy between the relationship between judge and accused and the relationships between characters within the plays of Shakespeare. The case at bar highlights an act of an interpretation of evidence with direct effects upon the individual

about whom the evidence is created; this is a dialogic process in which the judge and the judged are mutually implicated in a relationship with significant consequences each to the other. The relationship of the audience or reader of Shakespeare's plays is of a different order, as their interpretations of the acts of character will not lead to acts in a world in which the character is responsive. This special responsibility of the judge or jury foregrounds the necessity that the ultimate decision of fact inferred from evidence should be as just and possible; in order to be just, the facts inferred must be truthful. The decision to exclude the prior conviction in this case must be made for the furtherance of the justice of the trial of the accused, since, as the argument which follows will show, this evidence is both insufficiently probative and overly prejudicial.

The Bard de la Mer (Du Parcq v. Pederson; Pederson v. Vidaloca) [2005] 3 C. Sh. 1

3. According to the law of Shakespeare, the concept of 'character' or personality is nothing more than an inference drawn from circumstantial evidence. It is particularly dangerous, therefore, to consider 'character' to be evidence from which further inferences may be drawn.

The term "character evidence" has been suggested as an organizing concept in this appeal, but this vocabulary, drawn from the Common Law tradition, seems to carry with its very use a prejudicial presumption of a stable and coherent character. The term character suggests that there is a 'character' which can be proven. We respectfully submit that the law of Shakespeare does not posit a stable and predictive model of personhood. The audience and characters within Shakespeare's plays draw inferences about the 'character' or personality of characters based on direct knowledge of a character's actions and words, knowledge of a character's reputation and knowledge of the status or roles in the community which a character fills. The fact that knowledge of character is no more than inferential, however, means both that this knowledge is subject to change over time and that it is impossible to accurately determine claims of the truth or falsity of a judgment of character or even of the existence of a concept of character. Is Hal truly enjoying himself in the pub or is he merely acting as he claims to be? Did Anthony ever have a solid and consistent character which he has now lost? Is Kate changed person? If so, what does it mean to say so? Shakespeare's audience and his characters draw inferences in order to describe a person, but they cannot prove that their description is true, since it is unclear to what sort of truth the description can be said to correspond.

I Henry IV
Anthony and Cleopatra
The Taming of the Shrew

For purposes of this appeal, the measure of accuracy sought in the examination of this idea of 'character' or personality is straightforward. Evidence which might be said to contribute to inferences of an idea of 'character' such as a past conviction, could only be seen to be relevant evidence in the determination of the guilt or innocence of an accused person if such evidence could be said to accurately predict a person's behaviour. We may draw inferences about character from a pool of circumstantial evidence, and such inferences may be that the 'character is a nice person' that you would like to have lunch with or that they are a boorish idiot that you hope never to meet. Such facile judgments

of personality however, while perhaps reasonably accurate in the retrospective analysis of a closed pool of evidence, are not as useful to us when the task at hand is a genuinely (rather than merely hypothetically) prospective one, requiring what is essentially an accurate predictive judgment about an individual. In order to consider Laird's prior conviction relevantly admissible, one would have to demonstrate that the law of Shakespeare shows that an individual's past behaviour is significantly predictive of their future behaviour. This is a proposition which the law of Shakespeare simply does not support, just as it also does not support the predictive value of evidence of an individual's reputation or status or social roles.

4. According to the law of Shakespeare, a character's present actions are not reliably predictive of their future actions

At the opening of taming of *The Taming of the Shrew*, other characters despair that, based on her past behaviour, Kate will never marry. The opening of *I Henry IV* finds Henry IV in despair that Hal will be a poor king and leader. Kate's shrewish behaviour, of which the audience has direct evidence through her physical attack on her sister, is no guide to the accurate prediction of her behavior later in the play, just as Hal's exploits in the pub lead other characters in the play to project this behaviour into the future. The audience or reader of these plays has the benefit of insights provided by their awareness that the text is a play; expectations of genre may help them to predict that Kate will soon marry as we expect a comedy to end with a wedding, and knowledge of history will allow us to anticipate the change in Hal's behavior. Expectation of comedic irony will lead us to anticipate that Kate will come when called. Mr. Laird's life, however, is not circumscribed by the conventions of a dramatic text; in interpreting what the law of Shakespeare declares about the predictability of future behaviour based on past behaviour, we are in most cases better to be guided by the limits of the predictive abilities of the characters within the plays.

The Taming of the Shrew I.i, I.ii 22
I Henry IV I.i.78-91

The undermining of the ability of characters within a play to predict future behaviour based on past behaviour is most clearly demonstrated in *The Taming of the Shrew* when three husbands lay a wager on their wives' anticipated response to a request for their attendance to them. When Kate obeys when called and Bianca and the widow do not, it is not merely a change in Kate's behaviour which is foregrounded, but also a lack of predictability of the behaviour of the other women. One of the first pieces of circumstantial evidence provided by Iago in his baiting of Othello is a proposition depending upon an assumption of the predictive value of past behaviour. When Iago tells Othello: "She did deceive her father marrying you;/ And when she seemed to shake and fear your looks/ She loved them most" he plants suspicion by depending upon this trope, and echoes the bitter warning of Desdemona's father who has said "Look to her, Moor, if thou hast eyes to see:/ She has deceived her father, and may thee." Surely the play warns us that this kind of reasoning may prove dangerous and false.

The Taming of the Shrew V.ii
Othello III.iii.206-08; I.ii.292-293

It is clear according to the law of Shakespeare that it is not merely women whose past behaviour may not be predictive of their future behaviour; the law of Shakespeare provides further support for this principle in tragedies. Characters within the plays despair at lamentable behaviour of Othello and Anthony which could not have been predicted based on their past brave and noble behaviour. We are introduced to Anthony by one of his soldiers at the opening of the play as a man who has been “transformed/ Into a strumpet’s fool.” Upon discovering Othello’s murder of Desdemona, Lodovico exclaims “O thou Othello that was once so good,/ Fall’n in the practice of a damned slave/ What shall be said to thee?”

Othello V.ii.291-93

Anthony and Cleopatra I.ii.12-13

The idea of fate and the terms ‘fortune’ and ‘nature’ might be assumed to suggest the predictability of human behaviour, but in Shakespeare’s plays, these ideas most often highlight its unpredictability. In the course of their falls and as accompaniment to their changes in behaviour, both Anthony and Othello invoke fate. Communicating a sense of the inevitability of his decline, Anthony cries “[a]lack, our terrene moon/ Is now eclipsed, and it portends alone/ the fall of Anthony.” When Othello calls Desdemona “oh ill starr’d wench” after he has strangled her, he suggests that her fate has been influenced by the stars. Iago repeatedly and strikingly invokes nature and fortune as he does when he says “it is my nature’s plague to spy into abuses.” This positing of a cause of behaviour outside of themselves is not treated sympathetically by Shakespeare, as Iago’s reliance on this trope shows. As what often sounds like an attempt to deny responsibility, to “make guilty of our disasters the sun, the moon, and stars, as if we were villains on necessity,” these invocations of nature and fortune occur as part of a process of retrospective analysis and justification of behaviour. They are of no predictive value.

Anthony and Cleopatra IV.xii.19-20; III.xiii.154-56

Othello IV.xv.43-5; III.iii.146-47; V.ii.272

King Lear I.ii.110-11

The complexity of Hal’s change in behaviour underlines the difficulty of predicting future behaviour based on past behaviour. Though the audience apparently knows that Hal is merely pretending to be a lout among Falstaff and his friends, we do not know how far he will go to distance himself from them when he becomes king. The dramatic import of Hal’s invective towards Falstaff – “I know thee not, old man, fall to thy prayers” – comes from the unexpectedness of it. Even Falstaff will not believe the apparent change in Hal. He says to Justice Shallow, “This that you heard was but a color.” In addition, Hal’s apparent conversion comes as a surprise to his dying father who explains it via a communion with the divine: “God put it in thy mind to take it hence,/ That thou mightest win the more thy father’s love.” The dramatic power of this scene comes from the unexpectedness of Hal’s beautiful ‘prodigal son’ speech. Even the audience is not prepared for the powerful rhetoric of Hal’s declamation.

Henry IV, V.v.47; 85-86; II.i.178-9; 138-76

5. The law of Shakespeare shows us that reputation is a particularly unreliable measure of character and predictor of future behaviour.

Reputation, which is implicitly related to, and to some extent overlapping with, past behaviour, is equally unreliable as a guide to a prediction of future behaviour. The audience's knowledge of Othello and Anthony's past acts is dependent upon the endorsement of their reputations by other characters within the play.

Othello

Anthony and Cleopatra

Relying on past reputation as a guide to future behaviour betrays Anthony; he tells Cleopatra to trust Proculeius based on his understanding of Proculeius' reputation as a trustworthy person, yet Proculeius lies to Cleopatra about Caesar's intentions. Further supporting the argument that knowledge of past behaviour is an unreliable predictor of future behaviour, the truth is told to Cleopatra by Dolabella, someone whom the audience has seen previously as being very loyal to Caesar, having had no hint of any divided sympathies.

Anthony and Cleopatra IV.xv.48; V.ii.21-28; V.ii.105-10

The situation of Kate demonstrates the ways in which reputation and past behaviour are complexly interrelated, as the audience and the characters within the play rely more on evidence of her reputation as a shrew in their inferences of her 'character' than they do on direct evidence of her shrewish behaviour. As it does for Anthony and Othello, circulating knowledge of her reputation serves to give coherence to Kate's past behaviour and communicate the idea of a fixed nature and personality.

The Taming of the Shrew

Anthony and Cleopatra

Othello

It is based past behaviour and reputation that characters judge Anthony to be "not Anthony" and to be "transformed." While it is stated that "Anthony will be himself" and "I am/ Anthony yet," there is a collapse and confusion about the very notion of personhood or 'character' in the back and forth of these declarations about Anthony. At stake are both what and who others want Anthony to be, and who he desires and thinks himself to be. In this push and pull of expectation and desire and of conversations about personhood and 'character' it becomes clear that we can find no solid idea of Anthony from which to anchor predictions of his future behaviour. According to those who 'know him,' his honourable past made his ignoble future unimaginable. Who would have predicted that the valiant warrior would turn and retreat from battle?

Anthony and Cleopatra I.i.59; I.i.12; I.i.43; III.xiii.92-3

The law of Shakespeare shows us that predictions based on general reputation and past actions cannot decisively be said to hold, and that in their collapse, they undermine the very idea of "character" if this idea is said to be stable and predictive. What others report of someone's selfhood, be it shrewish, noble or loutish, may not forestall the possibility of future transformation and change. The law of Shakespeare shows us that in spite of what others may say, and what they may have done, characters change over time.

6. Social Roles cannot be seen as determinative of behaviour according to the law of Shakespeare.

It might be argued that if a character's past behaviour and reputation are not predictive in Shakespeare's world, that is only because their predictive value is subordinate to the predictive value of broader social roles or stereotypes. According to this logic, Hal's reformation is inevitable, because he will inevitably act as a king should, just as Kate will inevitably act as a woman should and Othello will ultimately act as one would expect that a Moor should. These conclusions are complicated by several factors. The idea that Hal may have some sort of inborn royal character which ultimately leads him to be a good soldier and a good king is complicated by the questions of legitimacy which haunts the reign of his father; one might ask, is Hal truly of royal birth? The idea that Kate has fallen 'naturally' into her proper role is undercut by the brutal and manipulative nature of her 'taming,' the ambiguities around the tone of her final speech, and the fact that other women are shown to be different from, and in fact, ultimately less obedient than, the transformed Kate. The racial stereotyping of Othello is complicated by the fact that it is the unreliable Iago who consistently invokes these stereotypes by saying for example, "these Moors are changeable/ in their wills" and by referring to Othello in brutal and bestial terms.

I Henry IV

II Henry IV

Othello I.iii.346-7; I.i.88-9, 109-13, 115-17;

The Taming of the Shrew

Anthony's treatment of Cleopatra reflect this self-serving potential of stock stereotyping. While Anthony initially praises Cleopatra as "cunning past man's thought," he later stereotypes her as a femme fatale a "triple-turn'd whore", who like the fate and fortune which he also invokes, is responsible for changing Anthony from himself. The retrospective convenience of this characterization undercuts its accuracy, and certainly does not support its prospective predictive value. The Court of Shakespeare must beware of admitting such stereotypes into evidence as evidence of 'character' or, more specifically, as accurately predictive of future behaviour.

Anthony and Cleopatra I.i.145; IV.xii.13

In the case at bar, the 'character' constructed from the prejudicial evidence might be said to portray the appellant 'a person of high social status who is hostile to authority and has a violent personality.' The questionable future predictive value of this inference is further undermined by the fact that this portrait might be inferred based on the admission of evidence of a single isolated past incident. Even with a rich pool of textual evidence of past behaviour to draw from, the consideration of 'character evidence' in the determination of guilt or innocence sets for the jury what is an impossible task. It asks them to do the equivalent of answering the question: ten years after her marriage to Petruchio, will Kate still come to him when called? We may lay a wager on this hypothetical situation, by building our own narrative forwards from a complex past to an unknowable future, but surely justice in the court of Shakespeare depends upon more certainty than this. Admission of the prior conviction in Mr. Laird's case requires the jury to take a turn at accurately predicting the future, taking into account not only

possible changes in behaviour but also changes in circumstances. This simply cannot be done with enough accuracy to be the basis of a just result.

The Taming of the Shrew

7. The legitimacy of the judgments of the Court of Shakespeare depends upon the exclusion of evidence of prior behaviour

It has been established by the Court of Shakespeare that an acknowledgement of the agency of the individual is required in order to justify their judgment. As Manderson J. states:

there is no law without responsibility, no responsibility without agency and no agency---which implies and must imply a course of action understood by the actor as having meaning and consequences across time—without some enduring sense of identity.

The concepts of agency lays the foundation for responsibility and accountability for one's actions under the law. An interpretation of the law of Shakespeare which posits a predictive model of character undermines the concepts of agency and identity and puts into doubt the legitimacy of the court's judgment. The distinction must be emphasized here between a retrospective provisional idea of character, assembled from relevant evidence of varying weight and quality in order to aid understanding and interpretation, and a prospective deterministic model of character, employed to undermine the agency of the individual and the imaginative potential of the author. The facts before the court constitute the second of these possibilities; the admission of evidence of past behaviour and reputation as relevant to the determination of a more recent act depends upon a deterministic concept of character which undermines an appreciation of individual agency.

Re Attorney General for Canada; ex parte Heinrich [2003] 1 C. of Sh. 1

It might be argued that the admission of evidence of past behaviour or reputation is not determinative and therefore deterministic, but rather that it gives only a suggestion that the individual is more likely to have committed the crime than someone else, that they are the type of person who would be more likely to commit this kind of crime. This distinction wrings hollow, however, as it gives us no standard with which to distinguish between the individuals of such a 'type' who in fact have committed the crime and those who have not. It is of no value in the determination of the guilt of the individual before the court.

8. The law of Shakespeare states that a change in behaviour productive for the community should be rewarded with praise, not suspicion.

The changes in behaviour demonstrated by Kate and Hal, from anti-social to socially acceptable, are met by the praise and notice of other characters. Those who had hoped for Kate to change admire the "wonder" of her transformation. Hal's assertion in soliloquy that his youthful carousing will make him ultimately shine all the brighter and "show more goodly" reflects a belief in the idea that not only need one not be anchored to the sins or misjudgments of a past self, but that one will be rewarded and praised more for having overcome a dark past. (i.iii.192) This is borne out in the warmth of Hal's

reception following his shift in behaviour, culminating in the triumph of *Henry V*. This reward of change seem to reflect a kind of hopefulness and a desire to reward change that is seen to be in the interest of others (as Kate's change in behaviour helps to serve the interests of both her sister and her father). The impulse to forgiveness and reward for positives change is an important constituting factor in a community built on mutual trust and responsibility which is framed by Christian ideas of forgiveness free will. This principle of the law of Shakespeare can be seen as a reflection of policy; it is in the interest of the community to allow an individual to overcome the stigma of past behaviour in order to encourage them to do so. Mr. Laird's case provides a clear example for the necessary application of this principle. If a single transgression, for which Mr. Laird has already paid his debt to society, can be carried forward in order to effect our determination of how he may have acted since, what incentive is there for people to improve their behaviour for the benefit of the community at large? If we were to allow Mr. Laird's first conviction to be admissible, it would have the effect of turning his first conviction into a final conviction, making it a stain or cloud which could never be lifted, and thus giving Mr. Laird little incentive to make changes in his life or in his behaviour.

I Henry IV I.ii.192

Henry V

The Taming of the Shrew V.ii.106, 189

9. The law of Shakespeare attests to the powerful prejudicial effect and significant persuasive power of evidence of past behaviour as it invokes inferences of character.

Though we have established that inferences about personality and character drawn from past behaviour, reputation and status are not reliably predictive of future behaviour, it is the enduring and persuasive power of such inferences which requires that they be excluded. Ideas of character and personality, though not accurately predictive, infuse the law of Shakespeare and our daily experience. The law of Shakespeare shows us that the drawing of these inferences is unavoidable and necessary; the political intrigue of *Anthony and Cleopatra*, for example, requires speculations about character and future behaviour to be made as a part of political manoeuvring. Smaller stakes games such as Lucentio's wooing of Bianca, require similar risk taking guided by predictions based on ideas of personality and character, and the plot in *The Taming of the Shrew* is driven by the overcoming of a prediction based on an idea of predictive personality. The marriage of Kate, which Gremio, Hortensio and Baptista lament that they simply cannot envision, though they hope for it, comes to pass in spite of the limitations of their ability to predict the future.

Anthony and Cleopatra

The Taming of the Shrew I.i.120-145

The desire to make meaning of a character by affixing a label to their personality; (Honest Iago, Shrewish Kate, Irresponsible Hal) speaks to characters' desire to infer accurately about others for the sake of the stability and interests of their own lives. The fact that the personality or 'type' of a person is not definitively predictive in the law of Shakespeare however, does not mean that this predictive or meaning making activity, this drawing inference about people, is entirely valueless. The law of Shakespeare suggests to us that a person who is consistently unpredictable over time is a lunatic, and such is

Kate's assessment of Petruchio upon their meeting. A lunatic is someone who is too changeable to be accepted by others in the creation of bonds and relationship as they undermine the measure of order and predictability that others desire. Cleopatra is figured as potentially such a character, but inferences about her are drawn from a play which is driven by uncertainty, intrigue and betrayal. Anthony and the Romans find in Cleopatra a symbol for the instability that they themselves have wrought in a complex political power struggle. Anthony's doubt of self knowledge, his despair at his change and his lack of control over his future, speak not only to his inability to predict his own behaviour, but his difficulties in drawing inferences about others and predicting their behaviour in such charged circumstances.

Othello

The Taming of the Shrew II.i.287

I Henry IV

Anthony and Cleopatra

The dependence, for both better and worse, on inferentially drawn ideas of character and personality, is a matter of necessity rather than a matter of choice for the characters in Shakespeare's plays, and reflects a strategic orientation to an unknowable future. The characters depend upon inferences drawn from evidence of varying reliability in order to guide their actions because they have no better alternatives available in order to guide their actions and opinions. The court of Shakespeare, however, does have options in the determination of the admissibility of evidence for purposes of the judgment of the accused; the court of Shakespeare can, and must, choose to exclude evidence from which jurors or judges may be tempted to draw prejudicial inferences about the personality or 'character' of the accused. The court of Shakespeare must choose to exclude such evidence precisely because of the power which it holds over the imagination; precisely because of our dependency on such inferences in our forward looking daily behaviour. More important, for the purposes of the goal of justice of this court, is the fact that these inferences, compelling as they are, may often lead to wrong decisions, rather than that they may sometimes contribute to a correct judgment. The admission of 'character evidence' has no purpose other than to give the jury information from which to draw these kinds of inaccurate predictive inferences, and we cannot assume that an individual will be able to determine the exact value of assumptions about 'personality' or 'character' in their interpretation of other evidence at hand.

10. According to the law of Shakespeare, in the drawing of an inference from a pool of circumstantial evidence we cannot know the relative weight and influence of each piece of circumstantial evidence.

In giving us an example of the drawing of inaccurate inferences from a pool of tainted and manipulated circumstantial evidence, Othello shows us the complex interrelationships of items of evidence in the determination of the final judgment. Evidence accrues and the inference of Desdemona's guilt is drawn from this totality. It is impossible to describe the precise weight and effect of each piece of evidence upon another.

Othello

It is only with the suggestion of Desdamons unfaithfulness that Othello begins to process evidence, but he does so, at Iago's suggestion, retrospectively, reinscribing meanings on past events. While we might say that certain pieces of circumstantial evidence are more compelling than others, that Othello's manipulated overhearing of Cassio speaking of Bianca and his seeing of the handkerchief in Cassio's possession are more convincing pieces of evidence than Iago's suggestion that Desdemona has shown her ability to betray others and therefore may betray Othello, we cannot say for certain the impact of these supposedly more compelling pieces of evidence would have had on Othello's reasoning without the prior positing of suggestions through 'character' evidence. It is simply not possible to separate out pieces of evidence to explain exactly how the inference is drawn, or how much evidence of what quality is required for someone to feel that they have enough evidence from which to draw a reliable inference.

Othello III.iv.180; III.iii.206-208;

In the case of Othello, we don't know which interactions of which pieces of evidence definitively tipped the scales in his mind to a sense of certainty of Desdemona's guilt. This uncertainty is the nature of inferences drawn from circumstantial evidence, it is for precisely this reason that the evidence of Laird's prior conviction must be withdrawn and excluded from a retrial. There is no way for this court to know the exact effect of this particular piece of evidence on the determination of Mr. Laird's guilt. Mr Laird's guilt was determined based on a particularly small and weak collection of circumstantial evidence, further leading to the possibility that this particular piece of potentially unfairly prejudicial evidence had determinative weight in the jury's decision. Regardless, it is that fact that the law of Shakespeare shows us that we cannot know the exact effect of this evidence on the jury's decision that requires the Court of Shakespeare to grant Mr. Laird a retrial with the exclusion of the evidence of his past conviction.

Othello

11. The law of Shakespeare warns of the dangers of drawing conclusions from a pool of circumstantial evidence which may include inaccurate prejudicial or fraudulently manipulated evidence.

There is little doubt that Othello provides us with an example of poor judgment and poorly drawn conclusions but it is also true that it provides us with examples of just and accurate judgment as well. The ad hoc investigation of Othello and Desdamona's marriage provides an example of good and fair judgment, in which the parties involved are able to overturn a wrong presumption established by inference from circumstantial evidence and establish the facts convincingly by speaking for themselves. This technique, of course, is not always available, as in the case it bar it is not possible for the victim to speak for himself in order to directly and definitively establish the truth. Instead, we must rely on a pool of evidence which is entirely circumstantial, and we must trust in our ability to judge this evidence well. Othello's judgment of Desdemona warns us of the dangers attendant to forgetting the distinction between inferences drawn from circumstantial evidence and direct knowledge.

Othello I.iii.180-89

The good judge, in Othello, ultimately is Emilia, who is able to assemble pieces of evidence from her direct experience in order to establish that truth of what has occurred. It would be unfair, however, to suggest that she is a 'better judge' than Othello by virtue of some kind of characteristic of her 'character'; it is clear instead that Emilia and Othello have access to very different types of information and evidence, and are guided by different purposes.

Othello

There is no such thing as evidence without argument. Evidence without argument is merely isolated fact, it is the act of making some use of it or drawing inferences from it for a particular purpose which makes it evidence. Othello is driven to find evidence for a singular and legally framed and defined purpose. Once Iago has suggested the possibility that Desdemona may not be honest, Othello's thinking and gathering and processing of evidence is focused single mindedly on the determination of this issue. Emilia, on the other hand, collects evidence which supports her final realization without knowing that she is collecting evidence for a purpose, without knowing in advance that this judgment lies in her future. This contrast also reflects the fact that Othello's evidence gathering is manipulated from the very beginning; it is subject to rules of inclusion and exclusion determined by Iago in addition to outright fraud. Emilia, on the other hand, enjoys a privileged position from which to collect information; her subordinate position in a position of trust to both Iago and Desdemona allows her to collect valuable information.

Othello

The Jury or Judge in this case find themselves in an evidence collection procedure more similar to that of Othello than that of Emilia, in so far as it purposefully seeks relevant evidence for the establishment of a particular fact, and it does so within the structures of an adversarial system in which evidence is chosen, framed and selected by parties with opposing interests. The jury does not have it within its ability to go back in time and become Mr. King's private secretary in the hope of being privy to evidence which may help establish the case, it depends instead upon the sorting of evidence found and presented after the fact. The court must therefore be careful to judge the relevance of evidence and include and exclude it based on its potential for the drawing of accurate inferences and its potential manipulation. This caution, delivered through the law of Shakespeare, justifies the careful and deliberate sorting and assembly of the pool of evidence presented to the jury at trial.

PART IV – ORDERS SOUGHT

The appellant respectfully requests that the Court of Shakespeare overturn the appellant's conviction and order a new trial, subject to the exclusion of the unjustly prejudicial evidence of the appellant's prior conviction for assault.

Claire Ezzeddin
Attorney for the Appellant

Karen Oberer
Attorney for the Appellant

PART V – AUTHORITIES

Case Law:

Re Attorney General for Canada; ex parte Heinrich [2003] 1 C. of Sh. 1

The Bard de la Mer (Du Parcq v. Pederson; Pederson v. Vidaloca) [2005] 3 C. Sh. 1

Codex, Institutes, Digests:

I Henry IV

II Henry IV

Henry V

The Taming of the Shrew

Othello

Anthony and Cleopatra

King Lear