

## **FACT SHEET**

### **Crown witness #1 – Police Sergeant Blue**

Police Sergeant Blue has been with the Nordic police force since 1970. The Sergeant was raised in Nordic and went to high school at the same school as the deceased youths, Brian Grey and Martin White. S/he knows their parents very well. There Sergeant graduated from Police College in 1969. The police force in Nordic consists of 3 officers. Sergeant Blue has never investigated a murder before.

On the evening of February 12<sup>th</sup>, 1989, Sergeant Blue was at the police station when s/he received a phone call from Robin Green around 10:00 pm. S/he recognised Green's voice immediately because s/he would go to Green's Grocery from time to time. The accused was speaking quickly and loudly, but Sergeant Blue recalls that s/he said, "Come quick. I have just killed two boys. There is blood everywhere".

Sergeant Blue drove to the accused's store and arrived there at 10:30 pm. S/he noticed that there was only one car in the parking lot. When the Sergeant entered the store, s/he noticed the bodies of the victims on the floor. Sergeant Blue has drawn a map (Exhibit 1) for the Court, which shows the layout of the store and the location of the bodies.

Sergeant Blue saw the accused standing with Mr./s Green and both were very quiet. The accused looked pale and shaken. The accused handed over the gun used in the shooting used in the shooting (Exhibit 2). No other weapon was found at the scene. The Sergeant telephoned another officer and called an ambulance to the scene. The other officer arrived 5 minutes later and took the accused to the police station. Sergeant Blue told the officer to read the accused his/her rights and not to question the accused until the Sergeant got back to the station.

Sergeant Blue then examined the bodies. Grey had been shot 6 times in the stomach and White was shot in the throat. Both were dead. They had been shot recently and their bodies were warm. Their clothing was searched and they were found to be unarmed.

When Sergeant Blue arrived at the police station, s/he interrogated Green for one hour. In the course of the interrogation, Green said, "I shot them. I killed them. I don't know why I did it. It just happened. It all happened so fast."

The Sergeant was very upset when s/he was examining the bodies. The Sergeant had known the boys since they were very young and had babysat them. Sergeant Blue had to reprimand them recently for their activities in the community.

Two weeks before the incident, the boys had been caught trying to burn Farmer Brown's farmhouse down. One month earlier, there had been a complaint that the boys and their friends had assaulted an elderly couple. (No money had been taken from the elderly couple, which were

unrelated to the boys, but they were badly beaten.) Charges were not laid because Sergeant Blue was not positive it was the boys, but the informant had told him/her that they were involved.

**NOTE:** In a real trial a police officer is not allowed to testify as to the statements of the accused without a ruling that the statements are admissible. For the purpose of this trial, assume that all the statements of the accused have been ruled admissible.

## **FACT SHEET**

Crown witness #2 – B. J. Smith

B. J. Smith is 17 years old. S/he is an acquaintance of the deceased youths, Brian Grey and Martin White. He has lived in the Nordic community since he was 5 years old. And went to school with White and Grey. Two years ago, B. J. was convicted of breaking and entering, but was only required to pay a fine. He had been arrested several times, but not charged.

On the day of the incident, (B. J. cannot remember the date, but thinks that it was a Monday), B.J., White and Grey did not attend school. B.J. thinks it might have been a professional development day. They spent the day at the pinball arcade and then went to Grey's house to watch TV and ordered pizza. They also picked up 3 twelve packs of beer. B.J. cannot remember how much they drank, but they were "tipsy". At about 9:30 that night, they got hungry and decided to go to Green's Grocery for chips and cigarettes.

B.J. cannot remember when they arrived at Green's, but thinks it was before 10:00, which was closing time. He stayed in the car while White and Grey went inside the store. He remembers that there was another car in the parking lot and that it was running. B.J was listening to the radio, which was playing loudly. He saw Grey and White try to get into the store but the door was apparently locked. Green came to the door and there was a discussion between them, (which B.J didn't hear). Eventually, the boys were let into the store. Green went back to the cash register and the boys seemed to be looking at things and that they were tossing items around and seemed to be trying to annoy Green.

He remembers seeing White lean over the counter and get very close to Green and say something. Green then pulled out a gun and shot White in the fact/throat area. Grey then ran towards Green and Green shot him in the stomach. (B.J. does not know how many times).

On cross – examination, B.J will admit that his view was partially obscured by a board in the window and he could only see the people inside the store from their waists up. B.J drove away fast. He says he did not call the police because he was scared. He was stopped by the police for speeding 10 minutes later and told the police officer that his friends had been shot at Green's Grocery.

He will describe Grey and White as "big, goofy guys" who had a lot of fun. White was the leader and was very intelligent. He had planned to go to university to study medicine and was the valedictorian of his high school. Grey was a follower but generally had a pleasant, gently disposition.

On cross – examination, B.J will admit that Grey and White had "mean streaks" and that they were involved in a number violent scuffles. The police had charged neither. They had told B.J. that they had "roughed up" Green's spouse and B.J. was therefore surprised that they were allowed into Green's Grocery by Robin Green that night.

## **FACT SHEET**

### **Defence witness #1 – Robin Green – the Accused**

The accused is 53 years old and is the owner of Green's Grocery. S/he is 5'1". The accused has been married to Ed(na) Green for 35 years and they have 5 children. The accused has no criminal record. Green's Grocery is a small convenience store outside of Nordic, on the main highway. It is the only store for several kilometres. The Greens have operated the store for 5 years and take pride in it.

Robin Green had recently become concerned about Ed(na) staying in the store at late hours and had bought a gun.

On the night in question, Robin was looking after the store alone. S/he had gone out to warm the car up at 9:50 pm. In preparation for closing the store and was locking up when White and Grey drove up. The youths knocked loudly on the door, yelled at Green to open the door and pushed the door open and stepped inside.

Once Green opened the door, the kids immediately started to throw things around and started to talk loudly. White grabbed a magazine and made rude comments. Green watched them from behind the cash counter, where s/he had placed the money for the day's business in a large envelope.

The youths suddenly came towards Green. White said, "Hey moron, you're not scared are you? I'll show you something to be scared off!" White leaned over the counter and Green believed that he wanted the cash. Green thought s/he saw a knife in White's hand. Green cannot recall the next few minutes very well, but s/he remembers "feeling petrified", reaching under the counter and pulling out the gun. Green also remembers shooting the gun at White. Grey then "came at" Green and s/he shot Grey. Green cannot remember calling the police but vaguely remembers calling Ed(na).

Green remembers very little about the police interrogation, but does not deny that s/he told the police that s/he shot the boys. S/he cannot disagree with what the police officer says that s/he said.

## **FACT SHEET**

Defence witness #2 – Ed(na) Green

Ed(na) Green is the spouse of the accused, Robin Green. Ed(na) is 55 years old. Ed(na) and Robin have 5 children. They have lived in a house a few miles out of Nordic for the past 6 or 7 years. Ed(na) and Robin have owned and operated Green's Grocery for 5 years. They take pride in it. Until recently, have enjoyed working there. They work in the store on alternate nights. Usually they work alone, although sometimes their children or grandchildren will help them. They share all responsibilities for the store: ordering, accounting, stocking the shelves, banking etc.

In the past 6 months, the Greens have had problems with shoplifters and vandals. Two weeks before the incident, someone had thrown a rock through the plate glass window of the front of the store and it was partially boarded up.

Three weeks before the incident, Ed(na) Green was working at the grocery late at night and four youths had come into the store. S/he recognised White and Grey as two of the youths. They caused a great deal of damage. When Ed(na) tried to stop them, White pushed him/her into a shelf and Ed(na) fell down. White then kicked Ed(na) in the stomach. The youths took \$50.00 worth of goods out of the store without paying.

On cross – examination Ed(na) Green will disclose that when Robin found out about the attack, s/he was very upset and furious and said "If I ever get my hands on those kids, I'll teach them a lesson."

Shortly after the incident, Robin bought a revolver, which s/he put under the cash register. Although Ed(na) claims that they did not intend to use the gun, they felt more secure with it there. Neither had ever used a gun before.

On the night of the shooting, Ed(na) was at home watching TV. Ed(na) received a phone call at 10:15 pm. S/he cannot remember what Robin said, but knew that something serious had happened and went right over to the store. When s/he arrived at the store, Robin said "I shot the kids. I was scared." On cross – examination, Ed(na) will admit that Robin could've said "I am scared".

Ed(na) describes Robin as a quiet, gentle person who loves his/her grandchildren. Robin has a "long fuse", but will occasionally become very angry.

**INDICTMENT**

File Number  
327052789

Canada  
Province of Ontario  
Judicial District of Ottawa - Carleton

HER MAJESTY THE QUEEN

Against

Robin Green

**INDICTMENT**

Name of Accused: Robin Green stands charged:

State Offence: Count 1 That, in the town of Nordic, in this province, on or about the 12<sup>th</sup> day of February 1989, Robin Green did unlawfully kill Brian Grey, thereby committing the offence of murder in the first degree, contrary to the provisions of s. 235 of the Criminal Code of Canada.

Count 2: That, in the town of Nordic, in this province, on or about the 12<sup>th</sup> day of February 1989, Martin White, thereby committing the offence of murder in the first degree, contrary to the provisions of s. 235 of the Criminal Code of Canada.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, AT \_\_\_\_\_.

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Agent for the Attorney  
General of Ontario

## **APPLICABLE LAW**

Here are the relevant sections of the Criminal Code under which Robin Green is charged:

Section 222 (5) defines murder:

- 222.5. A person commits culpable homicide when he causes the death of a human being
- a) By means of an unlawful act
  - b) By criminal negligence
  - c) By causing that human being, by threats or fear of violence or by deception, to do anything that causes his death,
  - d) By wilfully frightening that human being, in the case of a child or sick person.

Section 229 defines murder:

**Murder.**

229. Culpable homicide is murder

- a) Where the person who causes the death of a human being
  - i) Means to cause his death
  - ii) Means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not.
- b) Where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being
- c) Where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to affect his object with causing death or bodily harm to any human being.

Section 231 define the difference between first and second degree murder:

231. (1) murder is first degree or second-degree murder.  
(2) Murder is first-degree murder when it is planned and deliberate.  
(7) All murder that is not first-degree murder is second-degree murder.

Section 34 (2) defines the defence of self – defence where the accused has killed his/her assailant:

34. (2) everyone 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 probable grounds that he cannot otherwise preserve himself from death or grievous bodily harm.

NOTE: "Assault" is not restricted to actual application of force, but includes an attempted or threatened application of force. To rely on this section in defence to a murder charge, the accused must have believed that it was necessary to kill his/her assailants and there must have been reasonable grounds for such belief.

There are differences in law between first-degree murder, second-degree murder, and manslaughter. The important element of difference is the intent involved. First-degree murder is premeditated, that is, it is planned and deliberate. Second-degree murder is not planned, but is intentional. Manslaughter is simply the killing of another person by an unlawful act such as an assault. It is not necessary to prove intent to kill another person or intent to inflict an injury likely to cause death in order to establish manslaughter. For manslaughter to be proved it is necessary only to prove that death resulted from an act of the accused person and that this act was unlawful. A shot or blow delivered in self – defence may, of course, be lawful if it is delivered in circumstances which justified the use of such force.

The Crown is required to prove all elements of the offence beyond a reasonable doubt. Where the accused maintains that s/he was acting in self-defence, the Crown is also required to prove beyond a reasonable doubt that the accused was NOT acting in self-defence, as that defence is defined in the Criminal Code.

In conclusion:

- i) If it can be proven beyond a reasonable doubt that Robin Green let Brian Grey and Martin White into the store with the intention to kill them, and having planned and deliberated the killings then Robin Green is **GUILTY** of **FIRST DEGREE MURDER**.
- ii) If it can be proven beyond a reasonable doubt that, even though s/he had not planned it, Robin Green shot Brian Grey and Martin White with the intention of causing death or bodily harm which could result in death, then Robin Green is **GUILTY** of **SECOND DEGREE MURDER**, unless there is a reasonable doubt as to whether he acted in self – defence.



- iii) If Robin Green contends he was acting in self – defence, and if the Crown cannot disprove self – defence (as defined in s. 32 (2) of the Criminal Code), even if all elements of the offence of murder are prove, Robin Green must be found NOT GUILTY.
- iv) If it can be proven beyond a reasonable doubt that Robin Green shot Brian Grey and Martin White, without the intention of causing death or bodily harm which could result in death, and that death resulted from an unlawful act by Robin Green then Robin Green is GUILTY of MANSLAUGHTER, unless there is reasonable doubt as to whether he acted in self – defence.
- v) If any of the elements of the defence cannot be proved beyond a reasonable doubt, then Robin Green is NOT GUILTY.

## **ENTERING EXHIBITS`**

The Crown Counsel will want to introduce exhibits during the trial. In order to do this, the Crown will question the appropriate witness about the exhibit(s) involved. These questions will be asked mainly of Sergeant Blue. For example, when Sergeant Blue says that Robin Green handed him the gun, the Crown will ask the Court Clerk to produce the gun and then ask Sergeant Blue to identify the gun:

- Q. Is this the gun that Robin Green handed to you?  
A. Yes, this is the gun he handed me and I can tell because I initialled the label attached to the gun and my initials are still on the label.

The Crown will refer to the plan of Green's Grocery.

- Q. Did you draw this floor plan?  
A. Yes, I drew the plan when I returned to the office after leaving the store.

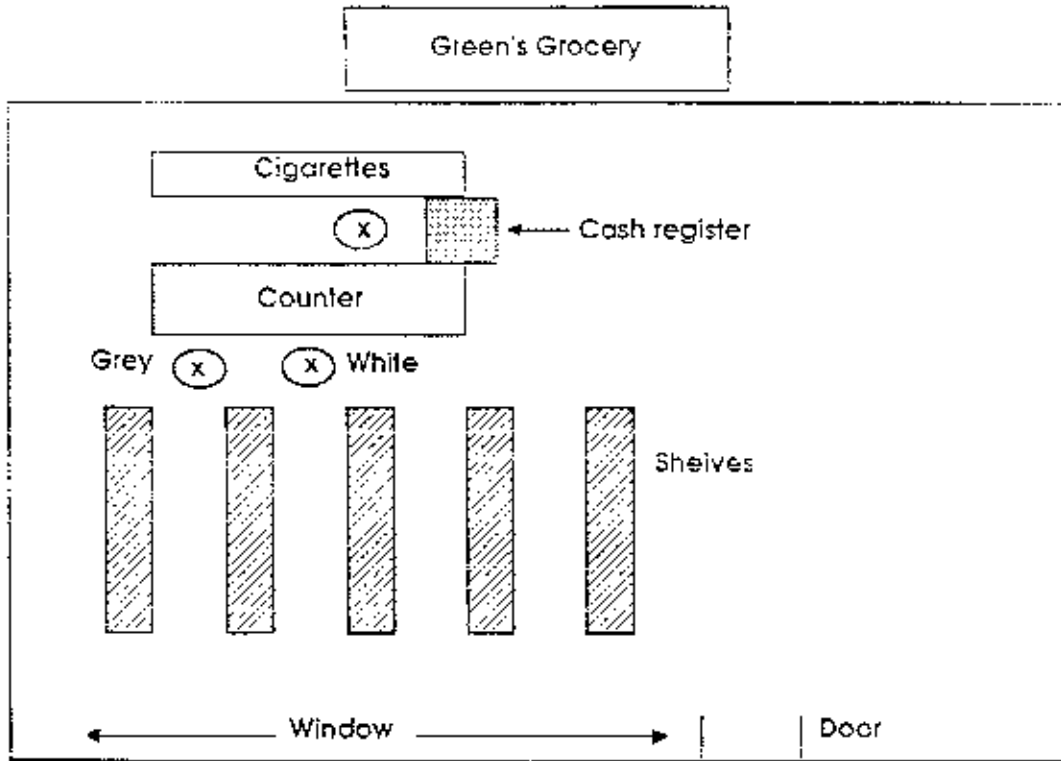
- Q. Can you indicate where the victims were lying?  
A. Yes, they were lying right here (pointing to their location).

The Court Clerk will mark and record exhibits for the trial. In this trial there are 2 exhibits.

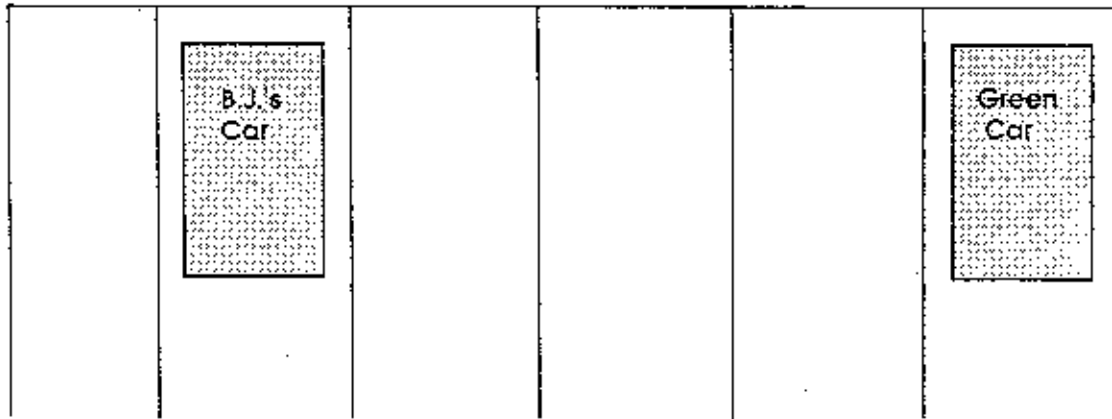
### **Exhibits**

1. Plan of the scene at Green's Grocery drawn by Sergeant Blue.
2. The gun used by Robin Green to shoot Brian Grey and Martin White.

EXHIBIT "1"



Sidewalk



Parking Lot