

R v Bann

OBA/OJEN Competitive Mock Trials

OFFICIAL CASE SCENARIO
2016

FINAL EDITION



ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

**Canada,
Province of Ontario,
County of Missinaba.**

In the Superior Court of Justice,

Her Majesty the Queen

against

Bobbie Bann

Bobbie Bann stands charged

1. That s/he on or about the 14th day of June, in the year 2015, at the City of Mariposa in the County of Missinaba, did commit second degree murder on the person of Fallon King, contrary to s. 235(1) of the Criminal Code of Canada.

Dated this 3rd day of September A.D. 2015 at Mariposa, Ontario.



**Josh Smith,
Agent for the Attorney-General of Ontario**

AFFIDAVIT

ONTARIO
SUPERIOR COURT OF JUSTICE
CENTRAL
Region

Court File No. 2015/0901

BETWEEN:

HER MAJESTY THE QUEEN
- and -
BOBBIE BANN

AFFIDAVIT OF: JAMIE TAGGART

I, **Jamie Taggart** of **Mariposa** in the **County of Missinaba**,
MAKE OATH AND SAY (or AFFIRM):

1. My name is Jamie Taggart. I am a member of the Mariposa Police Service holding the rank of Detective Inspector. I am 49 years old, and I have been a police officer for 25 years. For the last ten years, I have worked in the homicide squad. I have conducted about 40 homicide investigations.
2. On June 14, 2015, at approximately 2:00 am I was starting my shift when I sat down at my desk to check my voicemail and e-mails.
3. There had been some trouble at the Missinaba Credit Union, so I was the only one in the office when I took a call from Constable Morse of the Community Safety Unit.
4. Constable Morse and Constable Lewis had been dispatched to a house close to the intersection of Elm Street and Strange Street in response to a 9-1-1 call.
5. Constable Morse advised that on entering the home they found the body of a fe/male, late twenties, in an upstairs bathroom. I instructed them to contain the scene and proceeded to the address provided: 39 Elm Street.
6. The Forensic Identification Unit had already cordoned off the area when I arrived. As I was proceeding to the location of the body, I saw Bobbie Bann, the accused, crying in the living room located close to the front door.
7. I believe I heard Bobbie Bann say "I was so scared. I didn't mean to hurt anyone. I thought someone was in the house."
8. The body was located in the en-suite bathroom located directly off the master bedroom on the second floor of the home. The bathroom itself was quite large. It had a strange layout. The toilet was located in a separate small room within the large bathroom. "European" style, I believe.

9. To get to the main part of the bathroom, you entered what was a short hallway lined with cupboard and came around a corner to where the main part of the bathroom was – where the bathtub, vanity, shower and access to the toilet room were.

10. The first thing I noticed coming around the corner was that the window in the bathroom was open. The window looked out on the backyard.

11. I then turned my attention to the door to the toilet. It was open. I noted three bullet holes in it, and the top right panel of the door had been smashed in. A curling broom lay to the side of the door.

12. In the toilet room I observed a fe/male, approximately 28 years old, slumped on the ground. S/he had suffered obvious gunshot wounds.

13. This person was obviously dead. The coroner pronounced the death in my presence. I noted four gunshot wounds in total: two in the right leg, one in the chest and one in the right hand. I instructed the forensic unit to begin testing.

14. After obtaining a warrant, I instructed the uniform officers to begin a search of the home for any item that may be connected with the event. Almost immediately Constable Lewis located a gun in the master bedroom. It was a Glock 26 9mm pistol, approximately 6 inches long with a 1-1/2-inch diameter barrel. I ordered Constable Lewis to seize it.

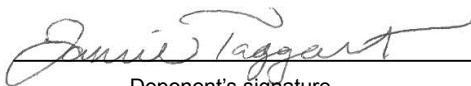
15. I returned to the first floor of the home and observed the owner of the house – the now accused, Bobbie Bann. Bann appeared to be in a state of shock and was weeping almost uncontrollably, and saying “Why did I shoot, why did I shoot?” again and again. I noted two open bottles of wine on a table near the accused. The bottles were empty.


16. There was a birthday card next to the wine bottles, which I seized as evidence.

17. Another person was present in the house, who I later learned was Avery Starr. I asked a uniformed officer to take a statement from Starr.

18. Bann was taken to the station by Constable Morse. I remained at the scene to make a sketch of the bathroom. The usual investigation, preparation, disclosure and other procedures were then followed.

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario, on June 29, 2015


Deponent's signature


Commissioner for Taking Oaths (or as may be)

AFFIDAVIT

ONTARIO
SUPERIOR COURT OF JUSTICE
CENTRAL
Region

Court File No. 2015/0902

BETWEEN:

HER MAJESTY THE QUEEN
- and -
BOBBIE BANN

AFFIDAVIT OF: RAINE LYNDE

I, **Raine Lynde** of **Mariposa** in the **County of Missinaba**,
MAKE OATH AND SAY (or AFFIRM):

1. My name is Raine Lynde. I am 35 years old. I work from home, making online videos on scrapbooking tips and trends, and consulting. I have three kids. I have been living on Elm Street for almost 12 years, at number 38. It's nice to work from home, on my own time, as I keep up with all the moms and dads in the neighbourhood and know all the comings and goings.

2. My partner and I moved into this house after we were married. As we were just starting out, we needed to live somewhere affordable. Unfortunately, this meant that our home is not located in the safest area. Since we've been living here, there have been a number of burglaries in the area. Thankfully, nothing has happened to us but you have to be very careful. That's why I keep my eyes and ears out.

3. About a year ago, Bobbie Bann moved into the house across the street. Bobbie's house is about 30 metres away from mine.

4. We did not speak much but Bobbie seemed nice. I think there was a roommate that lived with Bobbie. Maybe Bobbie needed help with the mortgage. Anyway, I never spoke with the roommate, although I saw them entering and leaving the house from the backyard.

5. On June 13, 2015, I was playing with the kids in the front yard and noticed that Bobbie was having the roof repaired. It looked like a crew of two or three men. We had to replace ours not too long ago because the roof was leaking. Maybe Bobbie had a leak in the roof like we did a few years ago.

6. That night, I went to bed around 10:30 p.m. My partner was away on a work trip and I had already put the kids to bed. I had been sleeping for a while when all of a sudden I heard a series of bangs and then screaming.

7. I rushed out of bed and looked out my bedroom window. My bedroom faces out onto the street and looks directly at Bobbie's house. There were no lights on. I am positive the screaming and bangs had come from Bobbie's house.

8. I just knew something was wrong so I called 9-1-1. I told the operator what I heard and asked that they send someone right away to check things out.

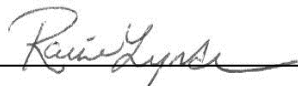
9. A few minutes later, I heard the sirens of a cop car coming down the street. The cops went into Bobbie's house. They must have called for backup because shortly after there were a lot of cop cars, an ambulance and a fire truck lined up down the street.


10. About an hour later I saw the cops pulling that yellow tape across the front lawn of Bobbie's house. Only then did I realize that something serious had happened. I went down and asked an officer what happened. He said that they found a dead body in the house.

11. Bobbie had a partner – a dating thing, they didn't live together. Bobbie mentioned this once while we were chatting, about a week back. Bobbie seemed a bit possessive. In fact, Bobbie had mentioned taking the relationship "to the next level" by moving in together and I asked if they were really ready for that, since I think they had only dated six months or something. And Bobbie couldn't imagine why not. Bobbie said s/he didn't think s/he would be able to handle it if the proposal wasn't accepted.

12. I can't imagine that Bobbie would do something like this but I guess you just never really know your neighbours.

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario, on July 7, 2015


Deponent's signature


Commissioner for Taking Oaths (or as may be)

AFFIDAVIT

ONTARIO
SUPERIOR COURT OF JUSTICE
CENTRAL
Region

Court File No. 2015/0903

BETWEEN:

HER MAJESTY THE QUEEN
- and -
BOBBIE BANN

AFFIDAVIT OF: BOBBIE BANN

I, **Bobbie Bann** of **Mariposa** in the **County of Missinaba**,
MAKE OATH AND SAY (or AFFIRM):

1. My name is Bobbie Bann. I am 29 years old and am a high school gym teacher at Mariposa High. I am also pursuing my dream of representing Canada in Olympic curling. Pro baseball used to be my dream, until an accident messed that up. I've walked with a limp in my left leg since I was 19. I try to avoid using my cane whenever I can. I skip my curling team so I don't have to sweep down the ice and I've made sliding work with the limp.
2. About nine months ago, I bought a house on Elm Street, near Strange. The house was a fixer-upper and the area isn't the best but it's all I could afford.
3. When I moved in, my neighbour across the street, Raine, warned me that I should take precautions and be careful in the area. Honestly, when Raine told me there had been a string of assaults that had happened in the past few years I was scared. Raine told me they had a gun in the house just in case.
4. After talking to Raine, I went through all the hurdles involved in acquiring a gun, including the training course, the waiting period, joining a gun club, etc. The gun is a Glock 26 9mm. I'm not supposed to keep it loaded, or store it under the bed as I do. I appreciate that. It's a rough neighbourhood. I'm just trying to keep myself and the people I love safe.
5. I was asked about Fallon. I have been, I mean was, dating Fallon for the last six months. I was in love.
6. June 13, 2015, was our six-month anniversary. It so happened that it was my birthday as well. That caused some joking, like over which was more important to me, etc.
7. Fallon came over to my house around 7:00 p.m. for dinner. We cooked a nice meal to celebrate both events and of course drank some wine.

8. I told Fallon I was in love for the first time that night. That whole situation was funny, too, because I was just about to say it when Fallon pulled out a birthday card and had me read it, and it was very cute, and it said Fallon was “ready” to say “I love you” too! That was great. I had been thinking about asking Fallon to move in but ultimately I decided not to complicate the moment – just enjoy it.

9. We went to sleep around 12:30am.

10. I remember I woke up suddenly from a deep sleep early in the morning – what would have been June 14, 2015. I heard Fallon roll over in bed and tried to get back to sleep.

11. After what felt like only a few minutes, I woke up because I heard this scraping noise coming from the bathroom. I bolted out of bed because I suddenly remembered that I had seen the contractor’s ladder resting up against the back of the house. I put two and two together and couldn’t believe how stupid I was. Someone was climbing in to rob us!

12. It was pitch dark and I was too scared to turn on the lights. I got up and grabbed my gun from under the mattress. I limped slowly toward the bathroom, as I had left my cane downstairs. While I was doing so, I whispered to Fallon to call the police.

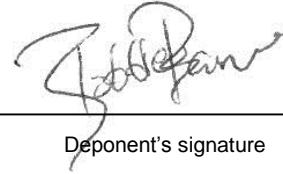
13. I stepped into the bathroom and saw the window was open. The door to the toilet was closed. I heard a noise coming from inside the toilet. I yelled out “I’m calling the police!” I am not really sure what happened exactly next but I thought I heard the person say “I got a gun”. I was not thinking. I heard that and pulled the trigger.

14. It was only after, when I went back into the bedroom to check on Fallon, that I realized something horrible might have happened. Fallon was not in the bed. I ran through the house yelling for Fallon but I didn’t hear anything. All of a sudden it hit me that maybe Fallon was in the bathroom.

15. I ran back to the bathroom. I tried to open the door to the toilet but it was locked. I grabbed my curling broom from the bedroom and smashed at the door in with the broom. I reached in and unlocked the door. There was Fallon. I do not know what I did next, I think I just started screaming.

16. Next thing I know there are two police officers knocking on the front door and a bunch of sirens. I just couldn’t process what was happening. One of the officers told me that I had better call my lawyer. I did that and was later taken to the police station. Everything was spinning around then, but I do remember at least that much of what occurred.

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario, on July 3, 2015



Deponent's signature



Commissioner for Taking Oaths (or as may be)

AFFIDAVIT

ONTARIO
SUPERIOR COURT OF JUSTICE
CENTRAL
Region

Court File No. 2015/0904

BETWEEN:

HER MAJESTY THE QUEEN
- and -
BOBBIE BANN

AFFIDAVIT OF: AVERY STARR

I, **Avery Starr** of **Mariposa** in the **County of Missinaba**,
MAKE OATH AND SAY (or AFFIRM):

1. My name is Avery Starr. I am 25 years old. I am in my last year of Teacher's College at Missinaba University and am hoping to become a Phys. Ed. teacher when I graduate. I know Bobbie Bann from my curling club. We play on the Sunday night social team together, but Bobbie is at the club most days as well, practising or playing with the competitive team.

2. I live with Bobbie at 39 Elm Street. It's close to school and the rent is the right price. I have the basement to myself, with my own separate entrance as well which is awesome since I tend to get in late at night. I would feel bad if I disturbed Bobbie. Bobbie and I get along though – we share the main floor of the house and I spent lots of time there.

3. On June 12, 2015, Bobbie sent me a text saying Fallon was coming over the next day to celebrate their six-month anniversary. I took the hint and told Bobbie that I would be out of the house for most of the night so they could have the place to themselves.

4. On June 13, 2015, I got home pretty late from a friend's house. We had a few drinks there so I think I banged the door pretty loudly when I got home. I go into the basement through the back door.

5. I also took down this ladder that was leaning up against the roof at the back of the house – it's not safe to leave stuff like that around in this neighbourhood. I seem to remember that Bobbie was getting the roof replaced around that time. The contractors must have forgotten.

6. As usual – at least when the wind is strong – Mr. Pettibone's weather vane from the house behind ours was making noise. I always notice it when I come in late because it's usually so quiet outside otherwise. The "E" has rusted half off, so it kind of scrapes against the roof when the wind is heavy. I remember that and the ladder so well because I was thinking I had half a mind to use the ladder to go up and fix it.

7. About 20 minutes later, I was just brushing my teeth when I heard these loud bangs. I think three in all. I'm not entirely sure. The next thing I heard was screaming.

8. Now that I know what happened it seems strange, but I hesitated a bit as I wasn't sure what was happening and I was in my undies. The screaming was incessant, though, so I pulled on some clothes and ran upstairs.

9. When I finally got up there I saw Bobbie coming out of the master bedroom. I didn't see Fallon. Bobbie was babbling, something like "I shot Fallon. I can't believe I did it." Bobbie looked horrible and I knew something was wrong.

10. At the same time, I heard this knocking on the front door. I took Bobbie downstairs to the living room. I answered the door and saw there were two police officers there. They rushed past me into the house. They saw Bobbie in the living room and asked whether there was anyone else in the house. Bobbie pointed upstairs and they rushed up there.

11. I sat down on the couch with Bobbie and I think I passed out. When I woke up, a police officer asked me to go to the station to take my statement. I agreed and was escorted out of the house.

12. At the station, I asked the police officer what happened. They told me Fallon was dead. I can't believe it. How did this happen?

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario, on July 15, 2015



Deponent's signature



Commissioner for Taking Oaths (or as may be)

APPLICABLE LAW

CRIMINAL CODE (RSC, 1985, c C-46)

Definitions

2 ... “bodily harm” means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.

Criminal Negligence

219 (1) Every one is criminally negligent who

(a) in doing anything, or

(b) in omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

Definition of “duty”

(2) For the purposes of this section, “duty” means a duty imposed by law.

220 Every person who by criminal negligence causes death to another person is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

Homicide

222 (1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

222 (2) Homicide is culpable or not culpable.

222 (3) Homicide that is not culpable is not an offence.

222 (4) Culpable homicide is murder or manslaughter or infanticide.

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;

Murder

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;
- (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 effect his object without causing death or bodily harm to any human being.

Second Degree Murder

231 (1) Murder is first degree murder or second degree murder.

231 (2) Murder is first degree murder when it is planned and deliberate.

231 (7) All murder that is not first degree murder is second degree murder.

Manslaughter

234 Culpable homicide that is not murder or infanticide is manslaughter.

Punishment for murder

235 (1) Every one who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

Manslaughter

236 Every person who commits manslaughter is guilty of an indictable offence and liable

- (a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- (b) in any other case, to imprisonment for life.

Defence — use or threat of force

34 (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
- (c) the act committed is reasonable in the circumstances.

34 (2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

- (c) the person's role in the incident;
- (d) whether any party to the incident used or threatened to use a weapon;
- (e) the size, age, gender and physical capabilities of the parties to the incident;
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
- (f.1) any history of interaction or communication between the parties to the incident;
- (g) the nature and proportionality of the person's response to the use or threat of force; and
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

Defence - property

35 (1) A person is not guilty of an offence if

- (a) they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds is in peaceable possession of property;
- (b) they believe on reasonable grounds that another person
 - (i) is about to enter, is entering or has entered the property without being entitled by law to do so,
 - (ii) is about to take the property, is doing so or has just done so, or
 - (iii) is about to damage or destroy the property, or make it inoperative, or is doing so;
- (c) the act that constitutes the offence is committed for the purpose of
 - (i) preventing the other person from entering the property, or
 - removing that person from the property, or

- (ii) preventing the other person from taking, damaging or destroying the property or from making it inoperative, or retaking the property from that person; and
- (d) the act committed is reasonable in the circumstances

CLARIFICATIONS AND UPDATES FROM THE INITIAL DRAFT

Below is a list of clarifications based on questions about the content of the scenario that were submitted after the initial draft was released. These are meant to address ambiguities or uncertainties that it is useful to address prior to the actual tournament. If a question was asked which is not dealt with below and has not been altered from the original draft, then that element of the case is meant to be as it is.

Wherever drafting, typographical errors, etc., were found, those were simply corrected in the text and are not noted.

Some details have been altered or added to the case based on questions. These have also not been noted, so participants should read the case again thoroughly.

1. Participants are reminded that, in accordance with the tournament rules, only the evidence and applicable law provided may be referenced at trial. Though *R v Bann* is obviously based on a well-known real-life case, only the facts and evidence provided may be relied on for the mock trial.
2. The dates on the affidavits and indictment are immaterial to the trial.
3. Specific laws related to firearms are not part of the applicable law of the case. Paragraph 4 of Bobbie Bann's affidavit contains all the relevant details, with regard to firearms laws and restrictions, which may be brought up at trial.
4. The case evidence has been updated and the pieces of evidence are now numbered for reference as marked by police. However, the evidence does not have to be introduced in order of the numbers. The evidence can be introduced in whatever order the Crown chooses and will be marked exhibit 1, 2, 3, etc., in each individual trial.