

REGINA V. MITCHELL

ADVANCED MOCK TRIAL



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Acknowledgements

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The Society has several first-class resource materials, including other mock trials and *Guide to Mock Trials: The Basics*, that can help you and your group learn more about the courts and justice system in British Columbia and Canada. For more information, contact us or visit our website:

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The Law Courts Education Society

We are a non-profit organization providing educational programs and services about the justice system in British Columbia and Canada. We help the public understand how our justice system works and we also help those people working within the justice system to better understand the justice-related issues that different people in our community face.

We work in partnership with the Ministry of Attorney General, the Ministry of Education, the Judiciary, the Canadian Bar Association (BC Branch), schools and communities.

With the support of our partners, funders and volunteers, we strive to maintain an accessible justice system for everyone.

Preface

This script was developed to be produced by Columneetza Senior Secondary School Law 12 and PACE 12 students in Williams Lake during Law Week 1991.

The script is based upon the trial of Wesley Evans. He was charged with murders committed in Matsqui in November 1984 and March 1985. He was tried and convicted in January 1986, and his appeal to the British Columbia Court of Appeal was dismissed in December 1988: 45 C.C.C. (3d) 523. He was acquitted by the Supreme Court of Canada in April, 1991: [1991] 1 S.C.R. 869. A summary of these judgments can be found in the back of this book.

The case of Wesley Evans can be described in many ways, but all who are familiar with it would agree that it is fascinating and controversial. Some persons believe that Wesley Evans, a confessed double murderer, got off because of technicalities and the Charter of Rights. But that is a very superficial view of the Evans case. This mock trial reveals how the police investigation was flawed, and it should cause participants and audiences to think about very real questions, including the interaction between the justice system and mentally handicapped persons.

This script (which was developed from the transcripts of the Evans trial) is intended to be an honest dramatization of the evidence that was presented to the court during the Evans trial. However, anyone reading or using this script should be aware of the fact that in Evans trial the jury did not hear of the discussion between the accused and the undercover officer or of the telephone call between the accused and his brother. This evidence, which was heard by the trial judge, was excluded from the case presented to the jury. It is, however, mentioned in the Court of Appeal decision.

This is an advanced mock trial. It is produced for senior students who have some mock trial experience and who are ready for a new challenge. This production requires a lot of work by the student participants. The authors suggest that a workshop involving medical and legal professionals will be very helpful. Students who participate in this mock trial can expect to learn a good deal themselves and to open some eyes in their audience while they are at it.

Finally, a few words of caution—the subject of this trial is violently unpleasant. The roles of some participants require the use of some coarse language. This is not meant to offend, but rather, to create a realistic scenario for the instruction and use by senior students.

Judge C.C. Barnett
Sandra Hawkins

Indictment

CANADA

PROVINCE OF BRITISH COLUMBIA

SUPERIOR COURT OF BRITISH COLUMBIA

IN THE SUPERIOR COURT OF BRITISH COLUMBIA

HER MAJESTY THE QUEEN

AGAINST TRAVIS MITCHELL

Travis Mitchell stands charged:

COUNT 1:

That he, the said Travis Mitchell, on or about the 24th day of November, A.D. 1991, at or near the City of Williams Lake, in the Province of British Columbia, did commit murder on the person of Roxanne Andrews.

COUNT 2:

That he, the said Travis Mitchell, on or about the 31st day of March, A.D. 1992, at or near the City of Williams Lake, in the Province of British Columbia, did commit the first degree murder on the person of Cleo Sims.

CONTRARY TO SECTION 235(1) OF OUR CRIMINAL CODE OF CANADA AND AGAINST THE PEACE OF OUR LADY THE QUEEN, HER CROWN AND DIGNITY.

DATED this 31st day of October, A.D. 1992 at the City of Williams Lake in the Province of British Columbia.

*Agent of the Attorney General for
The Province of British Columbia*

Getting Started

This mock trial has the following witness roles:

FOR THE CROWN

Cst. Drake
Mr. Sims
Srg. Haney
Dr. James Vinos

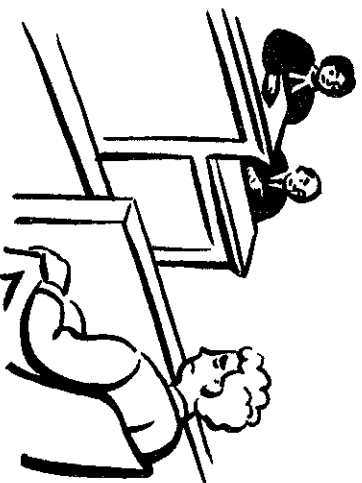
FOR THE DEFENCE

Mrs. Couture
Dr. Susan Berman
Cst. F.A. Kake

The judge's role as it relates to the specifics of this case is outlined in the Charge to the Jury.

These role sheets are designed to be used in conjunction with the material contained in the companion publication, "Guide to Mock Trials: the Basics."

Students should be warned that counsel **must not** ask questions on direct or cross-examination that will get the witnesses into areas not outlined in the role sheets. Students are expected to develop the roles but to keep them within the framework outlined in the role sheets. To get started, students will need to become familiar with their roles, and carry out the tasks outlined in "Responsibilities of the Participants" on p 8.

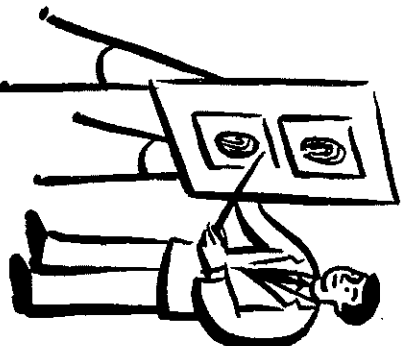


Exhibits

1. Photo of a woman stabbed to death in a bedroom of the house at 1352 Juniper Street. Her skirt is pulled up and she is apparently naked from the waist down. She also has many stab wounds to her upper torso. This is Exhibit 1.
2. Photo of a house, which appears to have been taken in late November. For the purposes of this trial, the house will be described as being located at 1352 Juniper Street. This is Exhibit 2.
3. Photo of a somewhat older woman stabbed to death in a bedroom of the house at 1575 Midnight Drive. Her skirt is pulled up and she is apparently naked from the waist down. She also has many stab wounds evident. This is Exhibit 3.
4. Photograph of muddy footprints (from numerous different shoes, boots, etc.) in entrance way of new house. This photograph includes a plain, but only partial footprint from Exhibit 7. This is Exhibit 4.
5. Photo of a new house displaying a real estate open house sign. This picture appears to have been taken in late March. For the purposes of the trial the house will be described as being located at 1575 Midnight Drive. This is Exhibit 5.
6. Small Lloyds calculator. This is Exhibit 6.
7. Pair of running shoes similar in size to those which fit the accused. This is Exhibit 7.
8. Lady's purse. This is Exhibit 8.
9. Texas Instruments calculator, similar to Lloyds calculator. This is Exhibit 9.
10. Transcript and tape of interview of Travis Mitchell by Sgt. Haney, August 3, 1992. These are Exhibit 10.
11. Statement written by Travis Mitchell for Sgt. Haney on August 3, 1992.
12. Transcript of telephone discussion between Travis Mitchell and Garth Mitchell on August 4, 1992. This is Exhibit 12.
13. An instruction book for the calculator. This is exhibit 13.
14. Notes made by Cst. Kake following discussions in cells with Travis Mitchell on August 3, 1992. These are Exhibit 14.

Admissions to be Made

1. That on November 24, 1991, Roxanne Andrews was staying at 1352 Juniper Street, and caring for the home, contents and pets while the owners were holidaying in Spain. Roxanne Andrews was killed that day and the person who killed her committed the crime of murder. She died after being stabbed twenty-five times.
2. That on March 31, 1991, Cleo Sims was conducting an open house for prospective buyers at 1575 Midnight Drive. Cleo Sims was killed that day and the person who killed her committed the crime of first degree murder. She died after being stabbed twenty-two times, and there was evidence that she had been sexually assaulted.
3. A decision has been made that certain statements made by the accused to police officers are admissible as evidence during his trial, and they will therefore be heard by the jury.
4. That Dr. Berman, a practicing psychiatrist, is qualified to give evidence as an expert witness upon psychiatric issues.
5. Travis Mitchell, the man accused of the murders of Roxanne Andrews and Cleo Sims, does not admit that he killed either woman. The essential issue in the trial is this: has it been proven beyond a reasonable doubt that Travis Mitchell is the person who killed Roxanne Andrews and Cleo Sims, or either of them?



Responsibilities of Participants

Cst. Drake

Meet with a member of your local R.C.M.P. Detachment, or member of your municipal police force. Obtain exhibits one through nine. Learn the appropriate manner for a police officer to give evidence in court.

Sgt. Haney

Meet with a member of your local R.C.M.P. Detachment, or member of your municipal police force. Obtain exhibits 10 through 12. Learn the appropriate manner for a police officer to give evidence in court.

Mrs. Couture

Obtain exhibit 13, which is the instruction booklet.

Dr. Susan Berman

Discuss with a local doctor how to give evidence in a case involving issues of mental disability. You will need to be able to describe the characteristics of a psychopathic person in order to give your opinion that Travis Mitchell is not a psychopath.

Cst. Kake

Meet with a member of your local R.C.M.P. Detachment, or a member of your municipal police force. Obtain exhibit 14. Learn the appropriate manner for a police officer to give evidence in court.

Crown Counsel

Consult with the mock trial's legal advisor. Interview Crown witnesses. Prepare opening address for the jury. Prepare questions for your witnesses. Anticipate questions you will ask defense witnesses in cross-examination. Prepare closing address to the jury, paying attention the Notes to Counsel and to the Judge's Charge to the Jury (in this script) as you do so.

Defence Counsel

Consult with the mock trial's legal advisor. Prepare opening address for the jury and questions for your witnesses. Work with your witnesses and prepare to cross examine Crown witnesses. Prepare a closing address to the jury, paying attention to the Notes to Counsel and to the Judge's Charge to the Jury (in this script) as you do so.

Court Clerk

Meet with Court Services personnel to learn the duties of a court clerk. Perform duties during the trial.

Sheriffs

Meet with persons in the Sheriffs' Office to learn their duties. Perform these duties during the trial.

Crown Witness #1 – Constable Drake

You are a member of the local R.C.M.P. On November 24, 1991, you were called to 1352 Juniper Street about 9:30 p.m. There you observed the body of a young woman, Roxanne Andrews. She was lying in a bedroom, fully clothed. You counted twenty-five cuts through her clothes, which were marked by blood, and you took photographs. (One of these is Exhibit 1.) You took fingerprint impressions throughout the house but none of these belonged to the accused. You also seized various hair samples found within the house, but none were matched to the accused.

You searched the house that night and returned the next morning to conduct further investigations. You did not find anything which might have been the murder weapon. You did notice a glass of water in the kitchen by the sink.

Exhibit 2 is a photograph of the house taken by you on the morning of November 25, 1992.

On March 31, 1992, you were called to 1575 Midnight Drive about 7:20 p.m. There you observed the body of a woman, Cleo Sims. She was lying in a bedroom. Her skirt was pulled up and her pantyhose were pulled down. She was naked from the waist down. You counted twenty-two cuts through the clothes on her back, which were marked by blood, and you took photographs. (One of these is Exhibit 3.) You took fingerprint impressions throughout the house, but none of these belonged to the accused. You also seized various hair samples found within the house, but none were matched to the accused.

You searched the house that night and returned the next morning to conduct further investigations. You did not find anything which might have been the murder weapon. In the foyer of the house you observed many muddy footprints which you photographed (Exhibit 4).

Exhibit 5 is a photograph of the house taken by you on the morning of April 1, 1992.

On August 3, 1992, you accompanied Sgt. Haney to the Mitchell home to arrest Travis Mitchell. After Mitchell had been taken away by Sgt. Haney, you searched his bedroom. You found a Lloyds calculator, which you seized (Exhibit 6). You also found a pair of running shoes, which you seized (Exhibit 7).

When you returned to the detachment you compared the tread on the shoes to the muddy footprints shown in the photograph, Exhibit 4. You observed that one footprint seemed very similar.

On December 13, 1992, you were called to attend at the schoolgrounds of the local high school about 9 a.m. There, lying clearly visible beside a walkway, you observed a lady's purse, which you seized (Exhibit 8). In the purse you found a wallet, some make-up, a comb and various other unremarkable items. There was no calculator among the contents.

Crown Witness #1 – Constable Drake *(continued)*

On cross examination, you will agree that you cannot say with certainty that the shoes you found in the accused's bedroom were the shoes which left a print in the house at 1575 Midnight Drive many months earlier, you will also agree that they are quite a common type of running shoe.

On cross examination you will recall that a Texas Instruments calculator was found later in the day on December 13, 1991, upon the same school grounds where the purse was found. This calculator will become Exhibit 9.

Crown Witness #2 – Mr. Sims

You are the widower of Cleo Sims. She was a real estate salesperson. On March 31, 1992, she was holding an open house at a new house. You and she had planned to attend a Socred constituency meeting that night, and you went to pick her up at about 7:15 p.m. When there was no response to your knocking on the front door, you opened it and went inside. You found your wife dead in a bedroom and immediately called the police. You remained at the scene and were there when Cst. Drake attended. (You will identify the scene which Cst. Drake photographed.)

You will say that your wife always carried a calculator in her purse and that you are certain Exhibit 6 was hers.

You will identify your wife's purse, Exhibit 8.

On cross examination you will reluctantly agree that you cannot be absolutely certain that Exhibit 6 was your wife's calculator.

Crown Witness #3 – Sgt. Haney

You are the member in charge of the General Investigation Section (G.I.S.) of the town's R.C.M.P. detachment. In June 1992, you received a tip from a confidential informer to the effect that Travis Mitchell's brother, Roland, was the killer of Roxanne Andrews and Cleo Sims.

Roland Mitchell is a man well known to you and you obtained an order from a judge allowing you to place a wiretap on Roland Mitchell's phone. You knew that Travis Mitchell was living with his brother and that he was involved in some small time soft drug dealings. You therefore decided to arrest him also. You did not much care about the drugs he was apparently selling, but you hoped that when you questioned him, he might provide information involving his brother in the murders.

On August 3, 1992, at about 10:00 a.m. other officers advised you that they had arrested Roland Mitchell at the Ranch Hotel. You immediately went with Cst. Drake to the Mitchell home, where you found and arrested Travis Mitchell.

When you arrested Travis Mitchell, you said to him:

"Travis, I am a police officer. I am arresting you for trafficking in marijuana. It is my duty to inform you that you have the right to retain counsel without delay. You are not obliged to say anything, but anything you do say may be used in evidence against you. Do you understand?"

Travis Mitchell replied, "No."

You then said, "Travis you have to come down to the police office with us now for trafficking in marijuana. Do you understand that?"

Travis Mitchell said that he did understand that.

At the police office you interviewed Travis Mitchell first, from 11 a.m. until noon. In your opinion, this interview produced no useful information concerning the killings. The interview was terminated so that you and he could eat lunch.

During the lunch break you talked to Cst. Drake, who told you of finding the calculator and running shoes in Travis Mitchell's Room. Cst. Drake showed you the shoes and the photograph, Exhibit 4, to compare. Cst. Drake also told you that she had called Mr. Sims, who confirmed that his wife had always carried a calculator in her purse. You therefore began to suspect that Travis Mitchell might be the killer.

You resumed interviewing Travis Mitchell at 1:30 p.m. (The tape of this interview will be played. It begins with a badly garbled Charter warning. The jury members will be given copies of the interview transcript, Exhibit 10.)

When the interview with Travis Mitchell ended, he was placed in cells. You had arranged to have Cst. Kake in the cells also. You did that because you hoped that Mitchell would make more admissions to Cst. Kake, who was told to pretend that he had been arrested for the possession of five pounds of marijuana. Travis Mitchell and Cst. Kake were left together from 4:00 p.m. until 5:30 p.m. You then removed Travis Mitchell from cells and asked him to accompany you in a police car to show you the places the killings had happened and to locate the purse belonging to Cleo Sims and the knife used to kill her.

You drove your police car with Travis Mitchell in the front passenger's seat. You first drove towards the place where Cleo Sims had been murdered. This place is about three city blocks from the place where Travis Mitchell was living.

You then went down the old Dairy Road where Travis Mitchell said he had thrown away the purse belonging to Cleo Sims and the knife he used to kill her. You stopped the car when Travis Mitchell directed you to do so, and the two of you got out to search for the knife and the purse. You did not find those things, but while you were looking, you asked Travis Mitchell how he felt after he had committed the murders. Travis Mitchell responded by saying that he had wondered when he would be caught.

You then drove to the place where Roxanne Andrews had been murdered. As you slowly drove along, you pointed to the house at 1352 Juniper Street. Travis Mitchell said he wasn't sure, but thought that was the house where he killed Roxanne Andrews.

You returned to the R.C.M.P. detachment about 7 p.m. Travis Mitchell was returned to cells (again with Cst. Kake) and given dinner.

At 8:45 p.m. you removed Travis Mitchell from cells and took him to an interview room. You then told him that he was going to be charged with the murders of Roxanne Andrews and Cleo Sims and that you wished him to write out a statement. You also told him that he did not have to do this and that if he did, the statement would be used as evidence. You said that he had the right to telephone a lawyer and if he could not afford to pay a lawyer, legal aid was available.

Travis Mitchell said that he did want to talk to a lawyer, and you, therefore, took him to the telephone. Travis Mitchell spent four minutes in the telephone room, and then left. He told you that the lawyer he had called was on holidays.

You said, "Well, you have a choice, you can either wait and call a lawyer later, or you can come back with me to the interview room."

Travis Mitchell replied, "I'll come back with you." In the interview room you asked Travis Mitchell to write out his statement, and he did that. (The statement is Exhibit 11 and you will read it to the jury.)

After obtaining Travis Mitchell's statement, you returned him to a jail cell and called for Dr. Vinros to attend and examine him.

In the morning of August 4 you were monitoring a wiretapped telephone call made by Garth Mitchell, a brother to Travis Mitchell. You then heard Garth Mitchell ask Travis Mitchell if he knew his rights and Travis Mitchell replied:

"Yeah, the right to remain silent, I know. I have the right to remain silent. Anything I say can and will be used against me in the court of law. I have the right to speak with an attorney, or to have an attorney present during questioning."

You will also recall that Travis Mitchell told his brother, "I watch TV, man, I know what's going on."

On cross examination your testimony will focus on the following issues:

- a) You will agree that you knew from the beginning of your investigation that Travis Mitchell is mentally handicapped. The officer in charge of your detachment had told you that. He said to be particularly careful to deal with Travis Mitchell fairly. You will add that you found Travis Mitchell "cunning."
- b) You will maintain that you really did arrest Travis Mitchell for a drug offence, not simply to get information concerning the murders.
- c) You will say that you did not tell Travis Mitchell that he was going to be charged with the murders until a very late stage in the investigation because "once he's at the police office he can be questioned about anything at all."

- d) You will agree that after talking to Cst. Drake during the lunch break on August 3, you were convinced that Travis Mitchell had committed the murders and that nothing could change your mind. You therefore became determined to “lead him and draw it out” and to “do anything legally in my power” to get a confession.
- But you will not agree with the suggestions that you browbeat Travis Mitchell until he simply gave up and adopted your version of the killing.
- e) You will strenuously disagree with the suggestion that you lied to Travis Mitchell when you told him that a witness had seen “somebody who looks exactly like you” at the house where Cleo Sims was murdered. (But you will agree that you cannot name any such witness.)
- f) You will strenuously disagree with the suggestion that you lied to Travis Mitchell when you suggested that his fingerprints had been found in the house where Cleo Sims was murdered. (But you will agree that his fingerprints were not found there.)
- g) You will acknowledge that Roxanne Andrews was not sexually assaulted when she was murdered.
- h) You will agree that when you went on the “show and tell” tour of the crime scenes with Travis Mitchell, he did not correctly identify the house where Cleo Sims was murdered. Rather, he pointed out the house across the street. You then pointed out the correct house, and he agreed.
- i) You will recall that before taking Travis Mitchell’s written statement, you asked him if he could read and write. He said that he was “good at it.” But you will recall that it took him nearly an hour to write out Exhibit 11.
- j) You will read to the jury the entire transcript of the phone call between Garth Mitchell and Travis Mitchell (Exhibit 12).
- k) Finally, you will agree that Travis Mitchell has been in custody continuously since he was arrested on August 3, 1992.



Crown Witness #4 -- Dr. James Vinos

You are a general practitioner. You came to this town after completing your internship six months ago.

On August 3, 1992, at about 10 p.m. Sgt. Haney called to request that you attend at the R.C.M.P. detachment to examine a prisoner. He wanted you to take hair and blood samples and to see if the man was a "mental case."

You arrived at the detachment at 11:30 p.m. and examined Travis Mitchell in one of the detachment offices. You knew what his charges were.

You will say that Travis Mitchell was co-operative during your examinations. He was quite willing to provide you with both head and pubic hair samples and blood samples. During the course of your examination, you observed extensive scarring upon Travis Mitchell's upper body.

You told Travis Mitchell that you had to ask him some questions to learn if he was "crazy" or not. You consciously tried to keep things simple and straightforward.

You asked Travis Mitchell some questions to see if he knew the difference between right and wrong, and he showed a "good judgement of those concepts." He then surprised you by rather suddenly saying he expected to get twenty-five years for having murdered two women.

At that point you changed your line of questioning and asked Travis Mitchell to tell you why he had done the killings. His response was to the effect that he was very "frustrated" with women, who were always teasing him and laughing at him. You will recall that Travis Mitchell said he "just couldn't hold it in anymore."

You will say that you knew that Travis Mitchell was supposedly mentally handicapped, but you found him to be "a fairly articulate young man" and "insightful" as well. You concluded that Travis Mitchell was not insane and that he was fit to stand trial.

On cross examination you will agree that you have no specific training in the field of psychiatry. You will say that when Travis Mitchell told you he killed the women because he was "frustrated," you did not sense that he was merely adopting and repeating a suggestion made to him by police. You believed him.

Finally, on cross examination, you will say that you estimated Travis Mitchell's I.Q. to be about eighty and that a "normal" I.Q. is one-hundred.

Defence Witness #1 – Mrs. Couture

You are the mother of the accused. Travis was born July 7, 1971, which makes him 22 now.

You will recall that when Travis was nine, he was struck by a truck. That accident left him mentally and physically handicapped as a result of brain injuries.

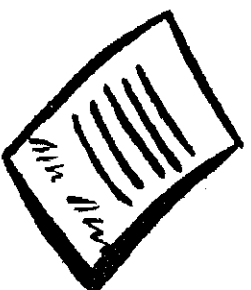
You will also recall that when Travis was eleven he was playing with matches, caused a fire, and suffered third degree burns over much of his upper body. He has had many rehabilitative operations. The last was in May 1990.

You will say that Travis had never been able to do well in school. The teachers tell you that he has achieved the equivalent of a grade 5 or 6 education, and he does not behave like an adult.

You will recall that Travis attended a special school for brain injured adults between January, 1989, and April, 1990. That was on Vancouver Island.

You will identify the calculator, Exhibit 6. You will say that you gave it to your ex-husband (who was a prison guard) for Christmas in 1989. But he walked out on you not long afterwards, and did not take the calculator. When Travis came back from the school on Vancouver Island, you gave the calculator to him. You will say that after the preliminary hearing on October 1992, you realized this might be a matter of importance, so you initialed the instruction booklet for Travis' calculator, and gave it to defence counsel. You will identify the instruction booklet, Exhibit 13.

On cross-examination, you will agree that you no longer have the receipt for the calculator which was given to Travis. You will emphatically deny having recently purchased a Lloyds calculator just to acquire an instruction booklet to support your false testimony.



Defence Witness #2 – Dr. Susan Berman

You are a psychiatrist. Your qualifications include being a full professor in the U.B.C. Faculty of Medicine and the head of the Forensic Psychiatric Services Commission of British Columbia. You have testified as an expert witness in more than fifty criminal trials but this is the first time you have ever been called to give evidence for the defence.

You first saw Travis Mitchell in early August, 1992. He had been remanded by court order for an assessment of his fitness to plead and stand trial. At that time you were provided with copies of the police circumstances and report to Crown counsel, and Dr. Vinos' opinion. You also had access to Travis Mitchell's medical records. You interviewed Travis Mitchell and arranged for certain psychological testing to be done. Your opinion in August, 1992, was that Travis Mitchell was not insane and that he was fit to stand trial.

In March 1993, you were asked by Crown counsel to consider further matters and to provide an opinion. This required a detailed study by you of the confessions obtained by Sgt. Haney from Travis Mitchell (Exhibits 10 & 11) and of the discussions between Travis Mitchell and Cst. Kake (Exhibit 14). You did this work and prepared a twenty-page report, which was given to Crown counsel.

You will say that, in your opinion, Travis Mitchell is a very passive person who is very dependent on authority persons around him. His ability to deal with stress and pressure is limited; when confronted, he has a clear tendency to yield and "permits himself passively to be led."

You will say that, in your opinion, Sgt. Haney's interrogation would have placed Travis Mitchell under extreme pressure and would have been very threatening to him. As things progressed and Sgt. Haney made it clear that he knew Travis Mitchell was the killer, Travis Mitchell was "encouraged to come up with something" and "wanted to yield to get Sgt. Haney off his back."

You will be asked a hypothetical question "assuming that Travis Mitchell's confessions were indeed false, is it consistent with his personality that he would admit to terrible crimes that he had not committed when interrogated as he was by Sgt. Haney, and later by Cst. Kake?" You will answer, "Yes," to this question, and you will elaborate upon that answer.

Defense Witness #2 – Dr. Susan Berman (continued)

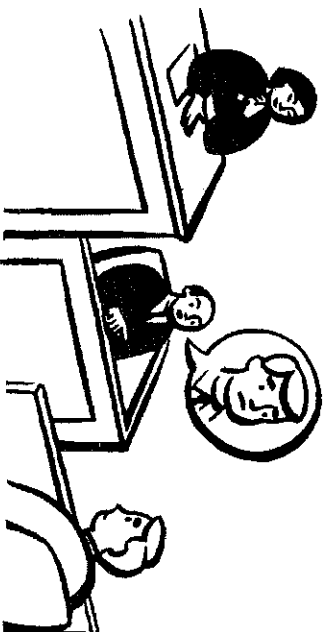
You will be asked how Travis Mitchell might have understood Dr. Vinos, and you will answer, “As an extension of the police team.”

Finally, you will say that Travis Mitchell is not a psychopath (and you will describe typical characteristics of psychopathic persons).

On cross examination you will acknowledge that you are not the decision maker: that is the work of the jury. You are merely trying to assist them in understanding why Travis Mitchell might have “confessed” to crimes that he did not commit.

On cross examination you will acknowledge that you (very deliberately) never did ask Travis Mitchell if he really did murder either woman.

Note: YOU WILL NOT BE ASKED IF YOU BELIEVE TRAVIS MITCHELL IS GUILTY OR NOT. YOU WILL NOT BE ASKED IF YOU BELIEVE HIS CONFESSIONS WERE TRUE OR NOT. YOU WILL NOT VENTURE ANY OPINIONS ON THESE ISSUES.



Defence Witness #3 – Cst. F.A. Kake

You are a member of the R.C.M.P. drug squad in Edmonton. You have received special training in memory and note-taking skills.

You were requested to come to town by Sgt. Haney to assist in a very serious and difficult murder investigation. You were to play an undercover role. In that role you were to pretend to be a drug trafficker, and you were to use the name "Lee Ryan."

The plan was that you would be placed in cells along with Roland Mitchell and try to engage him in conversation. You were told that he was to be charged with the brutal murders of two women. You prepared for the role by reading Roland Mitchell's many police and prison files.

On August 3, 1992, there was a late change in plans. You were told that your companion in the cells would be Travis Mitchell, the younger and mentally handicapped brother of Roland Mitchell. You were told that he was now known to have been the killer.

Travis Mitchell arrived in the cell block about 4:00 p.m. He was placed in a cell near yours. You opened the conversation by introducing yourself and asking his name. You then told him that you had been caught cold with five pounds of marijuana and expected that not even your lawyer, the famous, "Slippery Sid," could get you off this time. You asked Travis Mitchell what he was in for, and he told you that he was going to be charged with murder, although he was innocent.

You will recall that you then asked Travis Mitchell if he had cigarettes. He did, and you spent a few minutes transferring cigarettes from his cell to yours, using a blanket to draw them along the floor.

When you received the cigarettes, you asked Travis Mitchell more questions. He maintained that he was innocent and said that he had "confessed" only to get some rest from Sgt. Haney's questions. He also wondered about getting to talk to a lawyer.

You will recall that Travis Mitchell was taken from his cell at 5:30 p.m. You then made notes. Sgt. Haney arrived, and you talked with him briefly, at about 7 p.m. It was decided that it would be necessary for you to take a much more aggressive approach in your discussions with Travis Mitchell. The door of your cell was opened to allow you access to a "bullpen" area.

Travis Mitchell was returned to the cell block about 7:15 p.m. He was also allowed access to the bullpen. A guard brought dinners for the two of you. There were no other prisoners in cells. The only other persons in custody were a couple of noisy drunks in the tank.

While you were eating dinner, you started talking with Travis Mitchell about prison life. He told you about having visited his brother Roland when Roland was doing time in the penitentiary at Matsqui and said that since it looked like he was going to get a long sentence, he hoped to go to Matsqui, also. But when he kept insisting that he was really innocent, you told him that you did not believe that and figured him for a "bullshitter" who would be laughed at and beaten up by other inmates at Matsqui. Travis Mitchell then said he would not "bullshit you" as long as you did not rough him up.

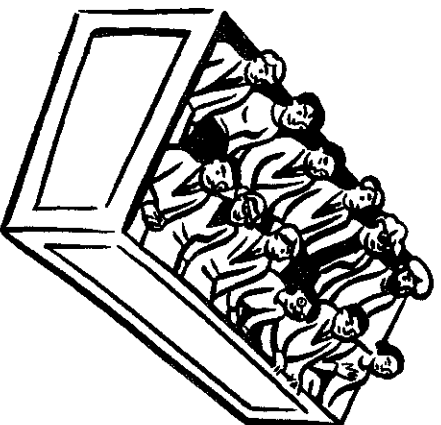
After that, Travis Mitchell told you that he had indeed killed the two women.

Travis Mitchell was removed from the cell area at 8:45 p.m., and you then made more notes.

You did not see Travis Mitchell again until August 9, 1992, when you were once more in cells together. On that occasion, Travis would not talk about his charges. He told you that his lawyer had told him not to say anything more to anybody.

You will read out your entire notes of the discussions between Travis Mitchell and you, which took place on August 3, 1992 (Exhibit 14).

You will not be cross examined.



Judge's Role – Charge to the Jury

Mr./Madam Foreman, ladies and gentlemen of the jury, it is now my duty to give you certain instructions before you begin your deliberations.

We have separate responsibilities in this case. It is my responsibility to instruct you concerning the legal principles you must consider during your deliberations. You must accept my statements defining and explaining the law. It is your collective responsibility to assess the events that gave rise to the charges against Travis Mitchell and to decide what happened. You are not obliged to accept the submissions of counsel or my own observations concerning the facts of this case.

There is a fundamental principle which you must understand and always recall during your deliberations. In Canada, when a person is accused of criminal wrongdoing, he or she does not have to prove innocence. It is the task of the prosecution to prove guilt beyond all reasonable doubt. If the evidence before you does not go that far, Travis Mitchell is entitled to be acquitted.

The evidence in this case, like the evidence in almost every case, was, at times, surprising, conflicting and confusing. It is your task to sort through the testimony of the various witnesses. You will use common sense and the wisdom that experience has taught you during your lives. You may accept all or most of the testimony given by some witnesses. You may reject all or most of the testimony given by some witnesses. You may feel that some witnesses observed and recalled the events accurately. You may feel that other witnesses were untruthful or that their testimony cannot safely be relied upon for any number of reasons. Honest persons can be mistaken in their observations and recollections of traumatic events.

I am required to review those areas of evidence which may be particularly important to your deliberations.

You know that somebody murdered Roxanne Andrews and Cleo Sims. The task for you is to decide if it has been proved beyond all reasonable doubt that Travis Mitchell killed either or both of these women.

Crown counsel says that you should accept Travis Mitchell's confessions as truthful, and convict him. Crown counsel says that Travis Mitchell admitted his guilt first to Sgt. Haney, then to Cst. Kake, and finally to Dr. Vinos. And Crown counsel stresses the proposition that Travis Mitchell's admissions to Dr. Vinos were spontaneous. The fact, it is said, must mean they were true.

Crown counsel draws your attention to three further items of evidence: the footprint found in the house where Cleo Sims was murdered, the calculator found in Travis Mitchell's bedroom and the glass of water found in the kitchen of the house where Roxanne Andrews was murdered. It is the submission of the Crown counsel that these individually small pieces of evidence each link Travis Mitchell to the murders and confirm the truth of his confessions.

Defence counsel says that apart from the confessions there is simply no evidence at all to establish the guilt of Travis Mitchell. And the further submissions of defence counsel is that the admissions of guilt made by Travis Mitchell were not true but rather were things said by a mentally handicapped young man desperate to obtain some relief from the insistent questioning of an overbearing and unfair police officer. Defence counsel says that the testimony of Dr. Berman and the evidence given by the undercover police officer, Cst. Kake, support this submissions.

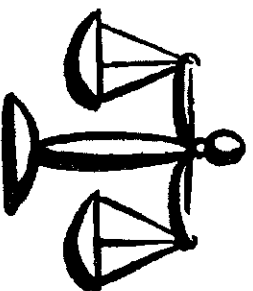
Defence counsel says that Travis Mitchell's confessions are not consistent with what Cst. Drake actually saw at the crime scenes. Defence counsel further reminds you that when Travis Mitchell was taken on a "show and tell" tour by Sgt. Haney, he was not even able to identify the house where the murders were committed.

I believe that I must tell you, as a matter of law, that if you cannot be satisfied beyond all reasonable doubt that Travis Mitchell's admissions of guilt were the truth, you must acquit him. There is not other evidence which is capable of establishing guilt independently of the confessions.

The following verdicts, and no others, are open to you in this case:

1. You may acquit Travis Mitchell on both counts.
 2. You might find Travis Mitchell guilty on one count and acquit him on the other. This would be a surprising result.
 3. You may find Travis Mitchell guilty on both counts.
- Ladies and gentlemen, you may now retire and begin your deliberations. You may wish to take the exhibits with you into the jury room.

CAUTION: *This "charge to the jury" was prepared for use during a mock trial only. It is necessarily abbreviated and simplified. It is not intended that any person should presume that the law is stated in a definitive manner herein.*



Actual Judgement

Regina v. W. Evans (1988) 45 CCC (3rd) 523 [1991] 1 SCR 869

Facts

The accused was a youth of sub normal capacity charged with the brutal murders of two women. The police arrested him on another charge and asked him if he understood the rights just read to him. He said he did not understand but they continued to interrogate him. Due to his statements they believed he was involved in the murders however they did not tell him that he was now being detained for that nor did they advise him of his right to counsel. They lied to him about fingerprint evidence and received incriminating statements that made up the entire case for the Crown. He was convicted of the murders and he appealed to the Court of Appeal who dismissed his appeal and upheld the convictions. The Appeal Court found that the trial judge had ruled as a matter of fact that the accused fully understood his right to counsel and that the police had informed him of this right. The accused appealed to the Supreme Court of Canada.

Issue

Do the police have to communicate the right of counsel to the detainee so that it can be understood?

Decision

The appeal was allowed and the accused was set free. The police can infer that the rights have been understood only if the detainee does not indicate his lack of understanding. Police can not rely on the mechanical recitation of the rights to the accused but must take steps to facilitate that understanding. Police have a duty to reiterate the right to counsel when circumstances arise where an accused is now a suspect for a more serious crime. The accused has a right to reconsider the original waiver given in respect to another charge. The statements were not reliable because of the police actions and the accused is entitled to fair treatment by police, which was not the case here.