



# ***R v. Clarke***

## **Mock Trial Scenario**

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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 the justice system in British Columbia and Canada. For more information, contact us or visit our web site:

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## **Preface**

This script was developed to be used in the Autocrime Courtlink Program and now is being printed as part of the Advanced Mock Trial Series. The script is based upon an actual case of Regina v. Jeremy Matthew Coles ( [2002] Get citation if case exists )

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. The trial demands that participants familiarize themselves with the responsibilities of various court personnel, and with the deeper issues raised by the case. For example, the students who play Crown and defence counsel should meet with local lawyers to discuss the case.

The role sheets included here are designed to be used in conjunction with the “*Guide to Mock Trials: The Basics.*”

You can modify this trial for your own use. For example, you may want to make the dates current, change the names of the characters, and modify the location for local relevance. The students involved in the trial can take part in the modification process, and you can incorporate appropriate suggestions.

In preparing for this mock trial, students are encouraged to focus on the legal issues arising from the case.

The events portrayed in the script are unpleasant. These features are not meant to offend; they are simply necessary to create a realistic scenario for the instruction of and use by senior students.

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## Getting Started

In **Regina v. Clarke**, a nineteen year old man is accused of causing the death of two people. It is alleged that Jamie Clarke wedged a stick between the accelerator and the front seat of a stolen vehicle and sent it careening through an intersection, where it crashed into a motorcycle carrying the two victims. Clarke is charged with two counts of criminal negligence causing death.

The witness role sheets in this guide are designed to be used in conjunction with the companion publication, “Guide to Mock Trials: the Basics.” This generic guide is available from the Justice Education Society Society.

This mock trial has the following witness roles:

### **For the Crown:**

Constable Van der Plomp  
Tara Smith  
Kristoph Hawkley  
Cora-Lee Moore  
Anne Thomas  
Dr. Elizabeth Boersma

### **For the Defence:**

Jamie Clarke  
Ally Block

Students should be warned that counsel **must not** ask questions in direct or cross-examination that will lead 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.

### **Exhibits**

There is one exhibit. It is produced by Constable Van der Plomp. It can be prepared by him in cooperation with the court clerk. It is a broken branch recovered by police from the “ghost” vehicle after the accident.

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## Materials for the Participants

### **Crown and defence counsel need:**

- All the witness role sheets
- Indictment, and instructions to counsel
- Judge's charge to the jury
- Sections 219 and 220 of the Criminal Code
- Crown and defence files from "Guide to Mock Trials: the Basics"

Crown and defence counsel should each meet with a lawyer to discuss the details of this case.

### **The judge needs:**

- All the witness role sheets
- Indictment, and instructions to counsel
- Judge's charge to the jury
- Judge's file from "Guide to Mock Trials: the Basics"
- Section 219 and 220 of the Criminal Code

The judge should meet with a local member of the judiciary, if possible, to discuss the case.

### **The court clerk needs:**

- Indictment
- Copies of sections 219 and 220 of the Criminal Code to hand to the jury when the judge has charged them
- Exhibit 1
- Court Clerk's file from "Guide to Mock Trials: The Basics"

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Indictment

CANADA  
PROVINCE OF BRITISH COLUMBIA  
SUPERIOR COURT OF BRITISH COLUMBIA

IN THE SUPERIOR COURT OF BRITISH COLUMBIA  
HER MAJESTY THE QUEEN  
AGAINST JAMES CLARKE

James Clarke stands charged:

THAT you, James Clarke, on or about the 11<sup>th</sup> day of October, A.D. 2000 at or near the City of Surrey, in the Province of British Columbia, did cause the death of Nick Smith and Polly Smith by way of criminal negligence, CONTRARY TO SECTION 220 OF THE CRIMINAL CODE OF CANADA AND AGAINST THE PEACE OF OUR LADY THE QUEEN, HER CROWN AND DIGNITY.

DATED this 8<sup>th</sup> day of January, A.D. 2001 at the City of Surrey, in the Province of British Columbia.

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Agent of the Attorney General for  
the Province of British Columbia

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## Instructions For Counsel

Note: Counsel should incorporate these ideas into their closing submissions. For details on how to construct the opening statement and closing submission, students should refer to the Crown and defence files in “Guide to Mock Trials: The Basics.”

### **Crown’s Submissions**

You will begin by telling the jury that this really is a very simple case and that if they consider the evidence in a logical way and apply their good common sense, they will undoubtedly find that the charge against James Clarke has been proven.

You will say that the evidence against James Clark speaks for itself. You will remind the jury that two witnesses heard the accused state his intention to send the vehicle through the intersection. Two witnesses saw him get a stick that would do the job. One eyewitness saw him place the stick so that the vehicle would careen uncontrolled down the street. As a result of this act, two innocent people lost their lives. You will point out that the lives of the victims’ family will never be the same.

You will say that those witnesses’ testimonies are backed up by the evidence of Anne Thomas, who saw a long-haired youth running from the scene, and by the evidence of Dr. Elizabeth Boersma, who found the accused’s fingerprints on the steering wheel. You will point out to the jury that neither of these witnesses had any reason to lie.

You will agree with defence counsel that what happened was an unfortunate tragedy. But you will remind the jury that this tragedy was not inevitable; two innocent people lost their lives because of a reckless act. You will tell the jury that you are sure that they will use their common sense to analyze the evidence and come to the right conclusion by convicting James Clarke.

### **Defence Submissions**

You will tell the jury that this case boils down to betrayal. Jamie Clarke was betrayed by his girlfriend and his best friend, who committed an unspeakable act, and then pointed the finger at him.

You will remind the jury that the only people who actually place Jamie Clarke at the scene of the accident are Cora-Lee Moore and Kristoph Hawkley. You will remind them that Ally Block saw Jamie leaving the McDonald’s without Cora-Lee and Kristoph. You will point out that no witness could positively say that they had seen Jamie at the scene.

You will point out that both Cora-Lee and Kristoph had reasons to blame the crime on Jamie; Cora-Lee was angry at him because of a fight they had recently had, and Kristoph was trying to avoid blame for killing two innocent people. In a clever, indirect way, you



will imply that Cora-Lee is a spurned girlfriend looking for revenge, and that Kristoph is a criminal looking for a way out.

Jamie Clarke did not cause this unfortunate tragedy. He was at home, in bed when the accident happened. You will remind the jury that if they have a reasonable doubt as to Jamie Clarke's guilt, they must acquit him. You will say that more importantly, they must acquit him because Jamie Clarke is innocent. You will say that the only reason he is in court today is because he chose the wrong type of friends.

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## Crown Witness #1 – Constable Van Der Plomp

You will say that you have been a member of the RCMP for 10 years and a general duties member of the Surrey detachment for 18 months. You will say that you received a radio dispatch to attend at the intersection of 96<sup>th</sup> Avenue and 125<sup>th</sup> Street at approximately 6:42 hours on October 11, 2000. You proceeded there immediately and arrived at approximately 6:47 hours.

You will say that when you arrived you saw a Ford Explorer up on the sidewalk, surrounded by a small crowd of people. As you made your way to the vehicle, you noticed a small child and an adult lying some distance away. As you approached the scene, the paramedics arrived and began work on the victims. You proceeded to the vehicle, thinking there might be someone inside. You opened the driver's door, and saw that no-one was in the vehicle. You then noticed a length of tree branch lodged between the floor and the seat. You immediately took possession of the stick and you will say that it has been kept under secure conditions since that time. You will produce it as Exhibit #1.

You will not be cross-examined.

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## Crown Witness #2 – Tara Smith

You are 35 years old, and work as an accountant.

You will say that you were the mother of 5-year-old Polly Smith, and the wife of Nick Smith.

You will say that at approximately 6:15 AM on October 11, 2000 your husband Nick left to take Polly to the baby-sitter's house on his way to work. He took his motorcycle, as he usually did when the weather permitted. You will say that the morning of October 11 seemed no different from any other morning. At approximately 6:30 AM you left your home to travel into Vancouver to go to work.

When you got to work at approximately 7:15, there was a message for you to call a Constable Van der Plomp of the R.C.M.P.. You will say that you called him, and that he informed you that there had been an accident, and that your daughter, Polly, and your husband, Nick, had been killed.

You will say that later that day, you were taken to the morgue and shown two bodies. You identified those bodies as your daughter, Polly, and your husband, Nick.

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### Crown Witness #3 – Kristoph Hawkley

You are twenty and unemployed. You live with your parents in Whalley. You have known Jamie Clarke since you were fourteen years old. You have known Cora-Lee Moore since you were sixteen, when she started going out with Jamie. You were with them the night of October 10, 2000 and the morning of October 11, 2000.

You will say that you recall the events of October 10 and 11.

You will say that at approximately 11:30 PM on October 10 you were watching television in your parents' basement when Jamie and Cora-Lee knocked on the window. You went to the back door, and Jamie told you they were going cruising in their buddy's new Ford Explorer and asked you to come along. You will say that you left the house with them at approximately 11:45.

You will say that for the next few hours the three of you drove around Surrey looking for friends. At approximately 3:00 AM, Jamie stopped the vehicle on a residential street, and the three of you got out and started checking parked cars for valuables. You will say that Jamie broke into two cars. The three of you searched the cars, and stole a number of CDs. For the rest of the night, the three of you drove the Ford Explorer around Surrey, breaking into cars and stealing CDs.

You will say that at approximately 6:00 AM the three of you drove the Ford Explorer to Jamie's house where you dropped off all of the CDs you had stolen. All three of you then decided to go to McDonald's for breakfast. After breakfast, at approximately 6:30 AM, the three of you drove to an area close to the intersection of 96<sup>th</sup> Avenue and 125<sup>th</sup> Street, where Jamie pulled the vehicle over. You will say Cora-Lee got out of the vehicle, while you and Jamie stayed inside.

You will say that Jamie told you that it was time to "lose" the Ford Explorer. You questioned him, asking "But isn't it your friend's?" Jamie laughed, and told you to "Get real". You will testify that this was the first indication you had that the Ford Explorer was stolen.

You will say that Jamie told you to wipe the inside of the Explorer to get rid of any fingerprints. You started wiping the dashboard, and Jamie got out, walked over to a nearby tree and broke off a large branch. When he came back, he moved the front seat of the vehicle back and told you to "Get out unless you want the ride of your life." You got out of the Explorer. Jamie called out to you, saying "Hey, do you want to see this thing go through 96th?" He then revved the

engine, jammed the branch between the accelerator and the front seat, and sent the Explorer racing off towards the intersection.

You will say that just as the Explorer reached the intersection, it crossed the centre-line and plowed into an on-coming motorcycle.

You will say that after the collision, you ran home. Later, you heard about the accident on T.V.. That was when you found out that the Explorer had struck and killed a kid and her dad. You were so upset about it that you called the police and told them what had happened.

You will say that Jamie was your friend, and that you hated being the rat, but that you were so ashamed of what he did that you had to testify against him. You will say that you had nothing against Jamie, and had no reason to frame him.

On cross-examination, you will admit that after you told the police what happened, you were arrested and charged you with possession of stolen property. You will testify that the possession charge is pending.

On cross-examination you will say that you believed Jamie when he told you that the Ford Explorer belonged to his friend. You will admit that at the time you did know that Jamie had stolen cars before. You will insist, however, that there was no sign that the Explorer had been stolen. You will also insist that you would not have gotten in the vehicle if you had known that it was stolen.

On cross-examination, if you are asked about a criminal record, and if the judge deems that evidence to be admissible, you will admit that approximately one year before the events of October 10 and 11, you were given a six-month suspended sentence for stealing a car stereo.

On cross-examination, you will again deny that you had any reason to frame Jamie. You will say that you and Jamie had had your differences, but that you had always been friends. You will deny any allegation that you and Cora-Lee were more than just friends.

**NOTE:**

During the defence's cross-examination of Kristoph, Crown counsel will object when defence counsel attempts to get Kristoph to admit his criminal record. Crown counsel will argue that this evidence is irrelevant.

Defence counsel will argue that s. 12 of the *Canada Evidence Act* clearly allows him to ask Kristoph about his criminal record. In addition, defence counsel will argue that Kristoph's criminal record is relevant, because it goes to Kristoph's credibility. He or she will argue that Kristoph's criminal record will help the jury to decide whether or not to believe his testimony.

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### Crown Witness #3 – Cora-Lee Moore

You are nineteen and unemployed. You live with your mother in Surrey. You are the girlfriend of the accused, Jamie Clarke. You will say that you were with Jamie Clarke and Kristoph Hawkley the night of October 10, 2000, and the morning of October 11, 2000.

You will say that you recall the events of October 10 and 11.

You will say that at approximately 10:30 PM on October 10 you were walking to a friend's house when your boyfriend, Jamie, pulled up in a new Ford Explorer and told you to hop in. You will say that you got in the vehicle, and asked Jamie where he'd gotten the car. He told you that he'd "borrowed it from a friend". When you asked him who, he told you to "mind your own business." You accepted this explanation.

You will say that you and Jamie decided to drive to the home of your friend Kristoph Hawkley.

You will say that you got to Kristoph's home at approximately 11:30. You and Jamie banged on the basement window, and Kristoph came out of the house. He asked about the Explorer, and Jamie explained that it belonged to a friend. The three of you got in the vehicle, and Jamie started driving.

You will say that the three of you drove around Surrey for a few hours. At approximately 3:00 AM, you decided to stop the Explorer and get out to look at a nice car parked on the street. Jamie broke into it, and stole some CDs that were inside. For the rest of the night, the three of you drove around, and breaking into cars and stealing CDs.

At approximately 6:00 AM, Jamie drove to his house and dropped off all the stolen CDs. The three of you then grabbed some breakfast at McDonald's. At approximately 6:30, Jamie pulled the Ford Explorer over. You will say that you were very tired, and that you got out of the Explorer without asking why. You will say that you saw Jamie walk over and break a branch off of a nearby tree, then walk back to the vehicle. You then sat down on the curb, because you were so tired. You remember Jamie and Kristoph climbing around inside the Explorer, and you remember Jamie saying something about fingerprints. Jamie and Kristoph got out of the car, and Jamie said something like "Do you want to see this thing go through 96<sup>th</sup>?" You will say that the next thing you remember is the vehicle careening down the street, crossing the centre-line and crashing. The three of you then ran away.

Later, you heard about the people that had been killed by the Explorer. You felt horrible about it, and couldn't stop thinking about the little girl and her father. The day after the accident, two R.C.M.P. officers came to your house, and questioned you about the

incident. At first, you said you didn't know anything about it, because you didn't want Jamie to get in trouble. The police officers then showed you pictures of the scene, including pictures of the little girl and her father. When you saw the pictures, you broke down and told them what had happened. You felt awful about telling on Jamie, but he had killed those people, and you didn't think he should be able to get away with it.

On cross-examination you will admit that you suspected Jamie had stolen the Explorer, but that you hadn't challenged him about it because you didn't think it was any of your business, and because you didn't want to get in a fight with Jamie. You will admit that you had charges pending against you for possession of stolen property because you had ridden along in the stolen Ford Explorer.

On cross-examination you will admit that you and Jamie don't always get along that well. You will admit, reluctantly, that the two of you had had a screaming match outside your old high-school only a week prior to the incident with the Explorer. You will say that you can't recall the reason for that fight, and that the two of you "fight sometimes, but you always get back together." You will insist that you have no reason to frame your boyfriend for these crimes.

On cross-examination you will say that you did not actually see Jamie place the branch in the vehicle. You will say that you assumed he did it because he went and got the branch. You will admit, however, that it is possible that Kristoph actually placed the branch.

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## Crown Witness # 5 – Anne Thomas

You are a retired legal secretary. You live in Surrey, a few houses down from where the accident took place.

You will say that on the morning of October 11, 2000, you awoke at 6:00, as per your usual routine. At around 6:30 you were sitting in your living room, enjoying your morning coffee and listening to the radio when you heard a loud roaring sound, like a revving engine. When you got up and looked out the window to see what was causing the noise, you saw an Explorer race down the street. You will say that the vehicle traveled out of your range of vision, and that you heard a loud crash. You looked up and down the street and saw three people running away. You are certain that two of them were male and one of them was female. Although you saw the people from a distance, you could see that one of the males had shoulder-length hair. You then called 911 and reported the accident.

On cross-examination, you will admit that you could not positively identify the people whom you saw running away. However, you will insist that you did see two men and a woman, and that one of the men had shoulder-length hair.



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## Crown Witness # 6 - Dr. Elizabeth Boersma

You are a forensic scientist. You have a Ph.D. in Chemistry. You have been employed by the R.C.M.P. Forensic Lab for ten years, and have worked in the fingerprinting department for that entire period.

You examined the vehicle in question on October 12, 2000.

You found that most of the fingerprints on the interior of the vehicle had been wiped clean. However, you did find one full print on the back of the steering wheel. After police made an arrest, they gave you the fingerprint of their suspect, James Clarke. That fingerprint perfectly matched the fingerprint on the steering wheel of the Explorer. You will say that it is likely that the person who left the fingerprint was behind the wheel of the vehicle.

In addition, you found a partial print on the outside of the passenger-side door. You will say that this fingerprint was likely left by a passenger when he or she left the vehicle. That print was consistent with the fingerprint of Kristoph Hawkley.

You will also say that you did not find any usable fingerprints on the stick found at the scene by Constable Van der Plomp.

On cross-examination, you will admit the placement of Jamie Clarke's fingerprint on the back of the steering wheel does not prove that he was driving the vehicle at any time. You will admit that it is possible that the print could have been left at any point during the night whether Jamie was driving or not.

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## Defence Witness #1 – Jamie Clarke

You are nineteen and unemployed. You live with your father in Surrey, B.C..

You will say that on the evening of October 10<sup>th</sup>, 2000 you were at your father's home until around 10:30 PM, when you left the house and started walking towards your girlfriend's home. You will say that as you were walking, your girlfriend, Cora-Lee, and friend Kristoph pulled up beside you in a Ford Explorer. You hopped in, and the three of you drove around for the rest of the night. You will say that you didn't break into any cars or steal anything. You will say that you didn't ask about the Explorer because Kristoph was driving and you didn't really care whose Explorer it was. You will say that the whole time the three of you were driving around you felt like something was "up" between Cora-Lee and Kristoph. You thought that maybe Cora-Lee was trying to make you jealous or something because you had had a fight the week before.

At around 6:00 AM, Kristoph drove to a McDonald's where the three of you had breakfast. While you were eating, Cora-Lee kept flirting with Kristoph, and Kristoph put his arm around her. You will say that their behavior made you really angry, and that you and Kristoph had an altercation which resulted in you leaving the restaurant without them. You walked around for a while before returning to your father's place, where you went to bed.

You will say that you didn't hear anything about the accident until the next day when some cops came to your home and arrested you.

On cross-examination, you will say that Kristoph did all the driving. You will say that you don't remember touching the steering wheel at all, and that the fingerprint on the steering wheel must have gotten there sometime during the night before you went to the restaurant for breakfast.

On cross-examination, when asked about your whereabouts on the morning of October 11, you will say that you didn't see anyone, and that you had just gone straight home to bed. You will say that your dad didn't see you come in, because you had just gone straight to your bedroom. You will insist that you had nothing to do with the accident.

On cross-examination, you will admit that at the time of the accident Kristoph's hair was cut short. You will also admit that at that time, your hair reached your shoulders.

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## Defence Witness #2 – Ally Block

You are eighteen years old , and you live in Surrey, B.C.. In October 2000, you were an employee of McDonald's, and had been working there for six months.

You will say that on the morning of October 11, you were working the till when two guys and a girl came into the restaurant and ordered breakfast. You recognized them as Kristoph Hawkley, Jamie Clark, and Jamie's girlfriend Cora-Lee Moore because you had gone to high school with all of them. The three of them ordered breakfast, then sat down in the restaurant. You will say that after a while, you saw Jamie get up and walk towards the door. You then were called into the back to attend to some hashbrowns. When you came back out to the till, the three of them were gone.

On cross-examination you will say that after the three sat down you didn't notice Kristoph and Cora-Lee flirting. You will also say that you didn't hear any yelling.

On cross-examination you will say that Jamie, Cora-Lee and Kristoph all sat in the back of the restaurant. You will admit that you do not remember what any of them were wearing. You will insist that you saw Jamie, not Kristoph get up and walk towards the door. You will admit, however, that you do not know if Jamie came back into the restaurant or not. You will admit that it is possible that Cora-Lee and Kristoph immediately followed Jamie out of the restaurant.

You will also admit that you and Cora-Lee did not get along in high school, and that you and Jamie had been better friends before he started dating Cora-Lee.

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## Judge's Role – Charge to the Jury

You can develop your opening statement to the jury by using the Judge's File in "Guide to Mock Trials: the Basics."

For your charge to the jury, you can draw upon the following statement:

Mr./Madam Foreperson, 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 charge against James Clarke 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 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, Mr. Clarke 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 evidence given by other witnesses. You may decide that some witnesses were honest, observed well, 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 will now discuss with you the offence of criminal negligence causing death.

The applicable provisions of the Criminal Code read as follows:

- 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.
- (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.

For the Crown to succeed, it must prove beyond a reasonable doubt the following ingredients:

- (1) First, the identity of James Clarke as the offender.
- (2) Second, the time and place of the offence as set out in the indictment.
- (3) Third, that James Clarke's conduct caused the deaths of Nick and Polly Smith by causing an automobile collision.
- (4) Fourth, that James Clarke's conduct showed a wanton or reckless disregard for the lives or safety of other persons.

I will now explain the essential ingredients of the crime. The first element, which is central to this case, is identity. The identity of the person who caused the deaths of Polly and Nick Smith is disputed. The defence takes the position that Jamie Clarke was at home alone when the collision occurred; this fact is not corroborated by any other witness, and therefore Jamie Clarke does not have an alibi. The defence also offers the evidence of Ally Block to show that Jamie Clarke left the restaurant before Cora-Lee Moore and Kristoph Hawkley. The Crown offers the evidence Cora-Lee Moore and Kristoph Hawkley, who say that Jamie Clarke sent the vehicle down the street where it collided with Nick Smith's motorcycle. By way of corroboration, the Crown offers the evidence of Anne Thomas to show that someone resembling Jamie Clarke was at the scene of the collision. In addition, the Crown offers the evidence of Dr. Boersma, who found Jamie Clarke's fingerprint on the steering wheel of the vehicle in question. You must decide which witnesses you believe, and you must decide how much weight you give to that person's evidence. If you believe the evidence of Jamie Clarke, you must acquit him. If you do not believe his evidence, and prefer the evidence of the Crown's witnesses, the Crown has met its burden to establish that Jamie Clarke was the person who set the vehicle in motion. You must then go on to consider the other ingredients of the crime.

The second ingredient of the crime is time and place. You have heard witnesses testify that the collision occurred on October 11<sup>th</sup>, 2000, at the intersection of 96<sup>th</sup> Avenue and 125<sup>th</sup> Street in the City of Surrey, so you should not have much trouble finding that the time and place have been proved.

The third ingredient the Crown must prove is that Jamie Clarke did something that caused the death of Nick and Polly Smith. This element has three parts: (1) an act (2) causation; and (3) death.

As I understand it, the Crown's position is that the act which Jamie Clarke did and which showed wanton or reckless disregard for the life or safety of Nick and Polly Smith, thereby causing their deaths was to force down the accelerator of the vehicle and aim it so that it would proceed at a great speed through a busy intersection. In support of this position, the Crown offers the evidence of Kristoph Hawkley, who says he saw James

Clarke do just that, and the evidence of Cora-Lee Moore who said she saw Jamie Clarke go and break off a tree branch. There is also the evidence of Constable Van der Plomp, who found a stick in the interior of the vehicle. If you have a reasonable doubt as to whether or not Jamie Clarke sent the vehicle into the intersection, you must acquit. However, if you decide beyond a reasonable doubt that Jamie Clarke did in fact do this, the first part of this test is met. If you find that Jamie Clarke did indeed send the vehicle through the intersection, you should have no difficulty in deciding whether the second component has been proven, namely the death of the victims. You will recall the evidence of Tara Smith, who identified the bodies of Nick and Polly Smith. You should also not have much difficulty in deciding that the act of forcing the accelerator and sending the vehicle into the intersection caused their deaths.

The fourth ingredient the Crown must prove is that Jamie Clarke, by his act showed wanton and reckless disregard for the lives or safety of other persons. You must ask yourselves if the act he is accused of was a substantial departure from what we expect of reasonable people. You must also ask yourselves whether the accused was indifferent to the consequences of his actions.

The Crown does not have to prove that Jamie Clarke knew or foresaw the consequences of his act. The act of sending an uncontrolled vehicle through an intersection speaks for itself. If the act constituted a marked and substantial departure from what we might expect of a reasonable person in the circumstances, then the conduct of Jamie Clarke constitutes criminal negligence.

I remind you that the Crown must prove each of these ingredients beyond a reasonable doubt. You must return a verdict of not guilty on the offence of criminal negligence causing death if the Crown has not proved each of these ingredients beyond a reasonable doubt.

I would like to point out to you that the most important question in this case is undoubtedly whether or not Jamie Clarke was the person who sent the Explorer careening down the street. To make this determination, you will have to consider the conflicting testimony of the witnesses. You will have to decide which witnesses you believe, and which witnesses you do not believe. In making this determination, you must use your common sense. I am sure you will return with a fair verdict.

Ladies and gentlemen, you may now retire and begin your deliberations. You may wish to take the exhibit 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 matter herein.

## **Actual Judgment**

### **Regina v. Jeremy Coles (2000)**

#### **Facts**

Jeremy Coles was charged and convicted of two counts of criminal negligence causing death and for possession of a stolen motor vehicle. The accused caused the death of six-year-old Cody Gratton and 42-year-old Bill Soper by rigging a vehicle so that it would take off on its own. Soper was driving Cody on his motorcycle to a babysitter's house when a driverless, stolen Ford Explorer slammed into them on a residential street in Surrey. The judge concluded that a stick was wedged between the accelerator and the front seat by Jeremy Coles, who then put the vehicle into gear and sent it "ghost riding" down the street, where it crashed head-on into the motorcycle.

#### **Issue**

Whether or not Jeremy was guilty of criminal negligence causing the death of Cody Gratton and Bill Soper and possession of a stolen motor vehicle.

#### **Decision**

The judge found the accused guilty on all counts and sentenced Coles to 10 years on each count of criminal negligence causing death and to six months for the possession of a stolen motor vehicle. The sentence was to be served concurrently. Coles was also prohibited from driving for 15 years. The judge said, "I view your actions as particularly reprehensible" and added "It was the culmination of a night of criminal behaviour, which was completely deviant."