

Role Play for Regina v. Feeney (DNA Evidence)

DNA Evidence in Landmark Cases

Exercise Instructions

Part A

Have your students read the *Facts of the Case Handout*.

Divide your class into three groups; one group will play the role of crown counsel, one group will play the role of defence counsel and one group will act as the jury.

Crown counsel:

What forensic evidence would you present to the jury in Michael Feeney's murder trial in 1992 and why? Prepare a closing statement to the jury.

Defence counsel:

What would you argue in Michael Feeney's defence? Which forensic evidence would you object to and why? Prepare a closing statement to the jury.

Ask a representative from both the crown counsel and the defence counsel to give submissions to the jury. Ask the jury to deliberate. Lead a class discussion on the jury's verdict.

Part B

Assume that Michael Feeney was convicted of second-degree murder by a jury at his trial in 1992. He appeals this conviction to the British Columbia Court of Appeal, and finally, the Supreme Court of Canada. In 1997, the Supreme Court of Canada orders a new trial, deciding that all of the evidence found by the police in Michael's trailer was obtained illegally and must be excluded.

1. Discuss why you think the Supreme Court of Canada decided that the evidence found in Michael Feeney's trailer was obtained illegally and must be excluded.
2. Assume that you are Crown counsel. Now that all of the evidence found by the police in Michael Feeney's trailer must be excluded, what remaining pieces of forensic evidence would you present to the jury at Michael Feeney's second trial in 1999, and why? Note that modern DNA testing is widely available in Canada by the mid-1990s.
3. Now assume that you are a member of the defence team. What would you argue in Michael Feeney's defence?

Facts of the Case

Michael Feeney has been charged with the second degree murder of Frank Boyle. Please read carefully the following evidence in the case against Mr. Feeney.

The Evidence

- Frank Boyle was an 85 year-old widower who was well-known in his community, the small northern town of Likely, B.C. Frank was last seen alive on the evening of June 7, 1991.

The Crime Scene

- At about 8:20 a.m. on June 8, 1991, Frank's neighbour noticed that Frank's garage door was open. This being out of the ordinary, the neighbour took a peek into Frank's house. He found Frank lying on his back in the living room.
- Frank had sustained five severe blows to the head, apparently from a crowbar. Any one of the blows was sufficient to kill him. Blood was spattered on the walls. The house was ransacked and his money, Sportsman cigarettes and beer were missing.
- Frank's red Datsun truck was gone too, but it was found a few hours later, abandoned at an S curve in the road ½ km away. A bloody crowbar was found near the truck.

Witnesses

- On the same day, June 8, the police talked to **Cindy Potter**, who lived near where the Datsun truck was found. She said she saw someone she knew only as Michael walking on the road at about 6:45 a.m. that day, heading away from the Datsun. He had something in his hand – possibly a beer, possibly a stick.
- The police next spoke with **Kelly Spurn**. Kelly owned a property that he rented to Angela Feeney Russell and her partner Dale Russell. Angela's brother, Michael, arrived in town not long ago and had been staying in a small trailer at the back of the property. Kelly told the police that the night before, Michael had stolen his blue flatbed truck and ditched it in exactly the same spot where the Datsun was found.
- The police next visited the property rented by **Dale Russell**. Dale told the police that Michael took a joyride in Dale's blue flatbed truck the day before and ditched it up the road. He told police that Michael came home around 7 a.m. that morning after a night of drinking.

- The police later interviewed **Angela Feeney Russell**. She told them that her brother Michael had no blood on him when he arrived home that morning. However, when it came to the second trial, Angela testified that she might have seen a few blood spots on his shirt, but that she might have just dreamed that.
- Several people who were partying with Michael the night before (June 7) testified that he had been bumming beer and cigarettes from them because, he said, he had no money.

Arrest of Michael Feeney

- After interviewing Dale Russell on June 8, the police proceeded to the trailer at the back of the property where Michael Feeney was said to be staying. The police did not have a search warrant. The police knocked on the trailer door, and when there was no answer, they walked in. They found Michael sleeping and arrested him for the murder of Frank Boyle.
- The police obtained a warrant under section 487.05 of the *Criminal Code* to take a blood sample from Michael.

Forensic Evidence

Michael Feeney's Trailer

- Upon entering Michael Feeney's trailer, the police found a pair of **Michael's shoes with blood** on them. It was later determined that the blood matched Frank's blood type. The soles of the shoes matched shoe prints found at the scene of the crime.
- They also found a package of **Sportsman cigarettes**.
- The police also seized the **blood-spattered T-shirt** Michael was wearing at the time, later determined to match Frank's blood. When the police asked Michael why there was blood on his shirt, Michael responded, "I got hit in the face with a baseball". However, he had no facial injuries when he was arrested.

Frank Boyle's Property

- In the cabin on Frank's property, the police found Frank's empty wallet and a **Sportsman cigarette butt**.
- The police also found a **fingerprint on the door of the refrigerator** in Frank's home. When they plugged this fingerprint into the B.C. Automated Fingerprint Identification System, they matched those of Michael Feeney.

Off-site

- Police also determined that the **blood on the crowbar** found beside the Datsun was of the same blood type as Frank Boyle's.
- The police found another **fingerprint on a beer can** in the cab of the Datsun. When they plugged this fingerprint into the B.C. Automated Fingerprint Identification System, they matched those of Michael Feeney.

Answer Key

Part A

Task for Crown counsel:

What forensic evidence would you present to the jury in Michael Feeney's murder trial in 1992 and why? Prepare a closing statement to the jury.

Answers:

- In addition to all of the witness testimony, Crown counsel would introduce all of the evidence located in Michael's trailer, because it proves Michael was covered in blood matching Frank's type:
 - Michael's bloody shoes, matching Frank's blood type
 - Michael's bloody t-shirt, matching Frank's blood type
 - The package of Sportsman cigarettes
- The evidence located on Frank's property, because it places Michael in Frank's house and on his property:
 - Michael's fingerprint on the fridge
 - The Sportsman cigarette butt
- The evidence found off-site by the Datsun, because it ties Michael to the truck, which was located right next to the bloody crow bar:
 - The bloody crowbar, matching Frank's blood type
 - Michael's fingerprint on the beer can inside the truck
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Task for Defence counsel:

What would you argue in Michael Feeney's defence? Which forensic evidence would you object to and why? Prepare a closing statement to the jury.

Answers:

There are a number of possible arguments, but here are some examples:

- In terms of the witnesses, you could undermine their credibility by pointing out inconsistencies or uncertainties. For example, Cindy Potter was not sure what the man she thought was Michael had in his hand.
- In terms of the forensic evidence, you could argue that the evidence from Michael Feeney's trailer should be inadmissible, because the police did not have a warrant or probable cause to enter his trailer.

- You could argue that much of the evidence is circumstantial – which means that there may be several different conclusions you could draw from a piece of evidence. For example, Michael’s fingerprint could be on Frank’s fridge because he was invited in. It does not mean Michael forcibly entered Frank’s home and killed him.
 - Unlike circumstantial evidence, direct evidence usually means there is only one obvious explanation for something. For example, if there had been an eyewitness who saw Michael kill Frank and then testified in court about it, this would be direct evidence.

Part B

Assume that Michael Feeney was convicted of second-degree murder by a jury at his trial in 1992. He appeals this conviction to the British Columbia Court of Appeal, and finally, the Supreme Court of Canada. The Supreme Court of Canada orders a new trial, deciding that all of the evidence found by the police in Michael’s trailer was obtained illegally and must be excluded. Note that that modern DNA testing is now available and increasingly widely used by police for criminal cases.

1. Discuss why you think the Supreme Court of Canada decided that the evidence found in Michael Feeney’s trailer was obtained illegally and must be excluded.

Answers:

- The police did not have a warrant to enter the trailer, and they did not have probable cause that Michael committed the crime
- The police cannot enter a citizen’s private property without permission unless they have a warrant or probable cause
- Section 8 of the *Canadian Charter of Rights and Freedoms* states that everyone has the right to be secure against unreasonable search and seizure

2. Assume that you are Crown counsel. Now that all of the evidence found by the police in Michael Feeney's trailer must be excluded, what remaining pieces of forensic evidence would you present to the jury at Michael Feeney's second trial in 1999, and why? Note that modern DNA testing is widely available in Canada by the mid-1990s

Answers:

- The evidence located on Frank's property, because it places Michael in Frank's house and on his property:
 - Michael's fingerprint on the fridge
 - The Sportsman cigarette butt found on Frank's property – as DNA testing is now available, test the saliva on it to see if it matches Michael Feeney's DNA
- The evidence found off-site by the Datsun, because it ties Michael to the truck, which was located right next to the bloody crowbar:
 - The bloody crowbar, matching Frank's blood type
 - Michael's fingerprint on the beer can inside the truck

3. Now assume that you are a member of the defence team. What would you argue in Michael Feeney's defence?

Answers:

There are a number of possible arguments, but here are some examples:

- You could again argue that much of the evidence is circumstantial. For example, even if Michael's DNA is found on the Sportsman cigarette butt, it only means that he was on Frank's property, it does not mean he killed him
- Remember that because the Crown must prove their case beyond a reasonable doubt, all that the defence has to do is raise any doubts at all about whether the evidence proves that Michael committed murder.

Actual Case History

First Trial - British Columbia Supreme Court (unreported, 1992)

- Michael Feeney was convicted of second degree murder by a jury in 1992.
- At this trial, the Crown relied on the evidence that had been obtained by the police when they entered Michael's trailer and arrested him on June 8, 1991.

British Columbia Court of Appeal ((1995), 54 B.C.A.C. 228)

- After he was convicted, Michael Feeney appealed his case to the B.C. Court of Appeal, arguing that this evidence had been obtained illegally by the police and therefore the Crown should not be able to use it against him in court. The Court of Appeal denied the appeal, and upheld Feeney's conviction.

Supreme Court of Canada ([1997] 2 S.C.R. 13)

- Michael Feeney again appealed, now to the Supreme Court of Canada. The Court agreed with the defence and overturned the rulings of the lower courts, holding that the evidence found when the police entered the trailer couldn't be used against Michael Feeney at trial.
- The reason for the court's decision is that police are not allowed to enter someone's home to arrest them unless they first have reasonable and probable grounds to believe that the person has committed an offence. The officer who entered the trailer testified at trial that he *suspected* Michael was involved, but that he did not believe he had reasonable and probable grounds to arrest him before entering the trailer. The Crown argued that, in spite of the officer's personal opinion, police actually did have sufficient information to arrest Mr. Feeney before they entered his trailer. The Supreme Court disagreed.
- Nor are police allowed to walk into someone's home for the purposes of searching it if they do not have a search warrant. There are narrow exceptions to that rule which allow police to storm in if they have good reason to believe that evidence is about to be destroyed or someone is about to be hurt, but the Supreme Court of Canada held that neither of these conditions existed at the time the police entered Michael's home.
- The Supreme Court held that because the police broke the law in very serious ways, none of the evidence they found in Michael's trailer that day could be used against him in court. Because he had been convicted on the basis of this evidence, the Supreme Court of Canada ordered a new trial.

Second Trial – B.C.S.C. ([1999] B.C.J. No. 688, aff'd 2001 BCCA 113)

- When the new trial was ordered, the police went back to work in an attempt to gather more evidence. Using new DNA technology, the police matched the saliva on the Sportsman cigarette butt found on Frank's property to Michael Feeney. They also relied on the fingerprints found in Frank Boyle's home and on the beer can in the Datsun that were matched to Michael Feeney, as well as the blood type test matching the bloody crowbar found by the Datsun to Frank Boyle.
- All of the evidence from the trailer that was used in Michael Feeney's first trial, which the Supreme Court held was collected illegally, was excluded.
- On the basis of the new forensic evidence, and especially the DNA match on the cigarette butt, Michael Feeney was again convicted of second degree murder by a jury in 1999. His appeal to the Court of Appeal (2001 BCCA 113) was dismissed.
- Interesting fact – the trial judge was Mr. Justice Wally Oppal, who is now the Attorney-General of British Columbia, and the Crown counsel, for both of Mr. Feeney's trials, was Kathy Murphy. Ms. Murphy was also Crown counsel for the recent high-profile trial of the five men accused of kidnapping Vancouver student Graham McMynn.