

## The Trial of James SMART

*(Magistrate knocks on door)*

**ORDERLY** *(Stands)* Silence in court. All stand.

*(Everyone in court stands. Magistrate walks to his/her chair and bows. Everyone else bows. Magistrate sits. Everyone sits, except Orderly)*

**ORDERLY** This Magistrates Court is now in session. From the S list, Smart, James Smart *(sits)*

*(Smart and Defence stand and walk to bar table and remain standing)*

**MAGISTRATE** Are you James Smart?

**SMART** Yes.

*(Smart and Defence sit. Magistrate looks to Prosecutor)*

**PROSECUTOR** *(Stands)* May it please the court Sergeant (your name) for the Prosecution *(sits)*

*(Magistrate looks to Defence)*

**DEFENCE** *(Stands)* May it please the court, my name is (your name) and I appear for Mr Smart.

**MAGISTRATE** Mr Smart has already pleaded not guilty to this charge. Does he still say that he is not guilty?

**DEFENCE** Yes, Your Honour.

**MAGISTRATE** Please stand, Mr Smart.

*(Smart stands)*

**MAGISTRATE** I will read you the charges again and ask you to confirm your plea.

Mr Smart, you are charged that on 1 February at Perthville (Local reference?) you stole a Makita D950 hedge trimmer valued at \$350, the property of Simon Temple. Do you still say that you are not guilty?

**SMART** Yes.

**MAGISTRATE** Take a seat, Mr Smart. Let's begin the trial.

*(Smart and Defence sit)*

**PROSECUTOR** *(Stands)* Your Honour, the prosecution will prove that Mr Smart entered Mr Temple's property at 12 Garden Street, Perthville, while he was away and was seen removing a Makita Hedge trimmer belonging to Mr Temple. That same hedge trimmer was later found at Mr Smart's house.

The prosecution will prove that the hedge trimmer was taken without Mr Temple's consent and the evidence will show that the accused had no intention of returning the property.

I call Mary Green *(sits)*

*(Orderly walks to where witnesses are sitting and calls Witness)*

**ORDERLY** Mary Green!

*(Witness stands and walks to witness box. Orderly sits.)*

**JSO** *(Stands)* Please raise your right hand and read the oath.

**GREEN** I swear by Almighty God that the evidence that I shall give in this case shall be the truth, the whole truth and nothing but the truth.

**JSO** Please be seated.

*(JSO and Witness sit)*

**PROSECUTOR** *(Stands and faces witness)* Please tell the court your name and address.

**GREEN** My name is Mary Ellen Green. I live at 14 Garden Street, Perthville.

**PROSECUTOR** Do you work, Ms Green?

**GREEN** Yes. I am a Nurse at Royal Perth Hospital.

**PROSECUTOR** Were you working on 1 February?

**GREEN** No. I had just finished a few days of night shift so I had two days off. I spent most of that time at home doing housework.

**PROSECUTOR** Do you know Simon Temple?

**GREEN** Yes, Mr Temple is my next door neighbour. We have lived next door to each other for about 12 years.

**PROSECUTOR** You said you were at home on 1 February. Did you notice anything out of the ordinary that day?

**GREEN** Yes. At about 4.30pm I heard a lot of noise coming from the direction of my kitchen window so I went to have a look what was going on.

- PROSECUTOR** When you say 'noise', what did you hear?
- GREEN** Well, at first I could hear something which sounded like a whipper snipper or a lawnmower then I heard a loud scraping noise. That was when I went to my window to have a look.
- PROSECUTOR** Where was the noise coming from?
- GREEN** The noise was coming from Simon Temple's back yard.
- PROSECUTOR** What happened next?
- GREEN** I heard the shed door slam shut and then I saw a young man run down the side of Simon's house, past my window and out on to the street.
- PROSECUTOR** Did you recognise that person who you saw leave Mr Temple's house?
- GREEN** Yes, it was James Smart.
- PROSECUTOR** Have you met Mr Smart before?
- GREEN** Yes. He does some gardening for Simon and I have met him in the yard a couple of times.
- PROSECUTOR** Was Mr Smart holding anything when you saw him run past your window?
- GREEN** Yes. He was carrying a green tool of some sort. It looked a bit like a small chainsaw.
- PROSECUTOR** What did you do then?
- GREEN** I went to have a look out the front of Simon's house. I thought maybe Mr Smart had to rush off and left it there. I was going to take it back inside because I didn't want anyone else to take it. I knew that Simon was away visiting his grandchildren so he wouldn't be there to pick it up.
- PROSECUTOR** Did you find the tool?
- GREEN** No, I did not. I looked in Simon's front yard and up and down the street but I couldn't find it.
- PROSECUTOR** What did you do next?
- GREEN** The neighbour across the road from Simon's house came out the front and said that he had called the police. I waited until the police arrived and I told them what I saw.

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<b>PROSECUTOR</b>	Did you ever speak to Mr Temple about the incident?
<b>GREEN</b>	Yes. When he returned from his trip a few days later I saw him in the yard and asked if the police had been in contact with him. He told me the police had told him what happened and he was furious. He was very angry even just talking about it.
<b>PROSECUTOR</b>	Did you ever see Mr Smart back at Mr Temple's house?
<b>GREEN</b>	No. I never saw him come back.
<b>PROSECUTOR</b>	Thank you <i>(Faces Magistrate)</i> Nothing further <i>(sits)</i>
<b>MAGISTRATE</b>	<i>(Looks to Defence)</i> Do you wish to cross-examine?
<b>DEFENCE</b>	<i>(Stands)</i> Yes, Your Honour. <i>(Faces Witness)</i> Ms Green, you say that before you looked out of your kitchen window you heard a power tool that sounded like a whipper snipper or a lawnmower?
<b>GREEN</b>	Yes.
<b>DEFENCE</b>	Could it have been a hedge trimmer?
<b>GREEN</b>	I suppose so, yes.
<b>DEFENCE</b>	Then you heard a noise and saw the shed door slam shut and Mr Smart run past your window holding a green power tool in his hand?
<b>GREEN</b>	Yes.
<b>DEFENCE</b>	Could that tool have been a hedge trimmer?
<b>GREEN</b>	Yes, but I can't say for certain what it was.
<b>DEFENCE</b>	How soon after the power tool stopped did you hear the shed door close?
<b>GREEN</b>	Within about 30 seconds.
<b>DEFENCE</b>	And how soon after that did Mr Smart run past your house carrying the green power tool?
<b>GREEN</b>	Almost immediately.
<b>DEFENCE</b>	You didn't see what Mr Smart did with the hedge trimmer when he left Simon's house did you?
<b>GREEN</b>	No. I didn't see where he went or what he was doing with it.
<b>DEFENCE</b>	You say that you have seen Mr Smart working at Simon's house before?

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<b>GREEN</b>	Yes, about once a fortnight.
<b>DEFENCE</b>	And are you aware of whether Mr Smart has worked there on other occasions when Simon has been away on holidays?
<b>GREEN</b>	Yes, last time Simon went to visit his grandchildren Mr Smart worked at his house.
<b>DEFENCE</b>	And there were no issues on that occasion that you are aware of?
<b>GREEN</b>	No, as far as I know there have been no problems at all.
<b>DEFENCE</b>	<i>(Faces Magistrate)</i> Nothing further, Your Honour <i>(sits)</i> .
<b>MAGISTRATE</b>	<i>(Looks to Prosecution)</i> Any re-examination?
<b>PROSECUTOR</b>	<i>(Stands)</i> No, Your Honour.
<b>MAGISTRATE</b>	<i>(Looks to witness)</i> Thank you, Ms Green. That completes your evidence and you are free to go.  <i>(Green returns to seat)</i>
<b>MAGISTRATE</b>	You may call your next witness.
<b>PROSECUTOR</b>	I call George Shine.  <i>(Orderly walks to where witnesses are sitting and calls Witness)</i>
<b>ORDERLY</b>	George Shine!  <i>(Witness stands and walks to witness box. Orderly sits.)</i>
<b>JSO</b>	<i>(Stands)</i> Please read the affirmation.
<b>SHINE</b>	I do solemnly, sincerely and truly declare and affirm that the evidence that I shall give in this case shall be the truth, the whole truth and nothing but the truth.
<b>JSO</b>	Please be seated.  <i>(JSO and Witness sit)</i>
<b>PROSECUTOR</b>	<i>(Stands)</i> Please tell the court your name and address.
<b>SHINE</b>	I am George Howard Shine. I live at 10 Garden Street, Perthville.
<b>PROSECUTOR</b>	Do you know Simon Temple?
<b>SHINE</b>	Yes, Simon and I have been neighbours for quite some time.
<b>PROSECUTOR</b>	Are you next-door neighbours?

- SHINE** No, I live across the road from Simon. My lounge room window overlooks his front garden.
- PROSECUTOR** On 1 February did you notice anything unusual about Mr Temple's property?
- SHINE** I saw a young man walking around the property. He was carrying a large bag. I watched him walk past Mary's house and down the side of Simon's house and go through the side gate in to Simon's backyard.
- PROSECUTOR** What did you do next?
- I went to the kitchen to make a cup of tea and when I came and sat back down in my lounge room I saw the young man walk very quickly down the side of Simon's house and out on to the street.
- PROSECUTION** Could you see whether the young man was carrying anything?
- SHINE** Yes. He had a green hedge trimmer in his hands and his bag slung over his shoulder. I recognise the hedge trimmer because I had borrowed it from Simon the week before.
- PROSECUTION** What did the young boy do when he got to the front of Simon's property?
- SHINE** He started walking towards the main road. He was looking around from side to side.
- PROSECUTION** What did you do next?
- SHINE** Well I knew Simon was away on a holiday so I called the police to inform them about what I had seen.
- PROSECUTION** Had you seen the young man before?
- SHINE** Yes. It was the same young man that had been doing some work for Simon for the past few months. I recognised him, but I don't know his name.
- PROSECUTION** Thank you. **(Faces Magistrate)** Nothing further, Your Honour **(sits)**
- MAGISTRATE** **(Looks to Defence)** Do you wish to cross-examine?
- DEFENCE** **(Stands)** Yes, thank you Your Honour.
- (Faces Witness)** Mr Shine, had you seen Mr Smart at Simon's before 1 February?
- SHINE** Yes, I've seen him doing some work in Simon's garden.

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DEFENCE	Are you aware that Simon had given Mr Smart a list of chores to do on a fortnightly basis?
SHINE	Well, Simon had told me he had someone coming over to help him with chores around the house but I don't know exactly what those chores were.
DEFENCE	Are you aware that Mr Smart had come to do work on Simon's property on other occasions when Simon was away?
SHINE	Yes, I have seen him there when Simon has been away.
DEFENCE	Are you aware of any problems occurring on the other occasions Mr Smart has worked for Simon while he has been away?
SHINE	No.
DEFENCE	From your lounge room, could you hear the sound of a power tool shortly after Mr Smart arrived at Simon's house?
SHINE	No. I couldn't hear anything. I'm a little bit deaf in my old age.
DEFENCE	Nothing further, Your Honour <i>(sits)</i>
MAGISTRATE	<i>(Looks to Prosecutor)</i> Do you wish to re-examine?
PROSECUTOR	<i>(Stands)</i> No thank you, Your Honour.
MAGISTRATE	<i>(Looks to witness)</i> Thank you, Mr Shine. That completes your evidence and you are free to go.  <i>(Shine returns to seat)</i>
MAGISTRATE	Do you wish to call any more witnesses, Sergeant?
PROSECUTOR	Yes, Your Honour. I call Jane Russell.  <i>(Orderly walks to where witnesses are sitting and calls Witness)</i>
ORDERLY	Jane Russell!  <i>(Witness stands and walks to witness box. Orderly sits.)</i>
JSO	<i>(Stands)</i> Please read the affirmation.
RUSSELL	I do solemnly, sincerely and truly declare and affirm that the evidence that I shall give in this case shall be the truth, the whole truth and nothing but the truth.
JSO	Please be seated.  <i>(JSO and Witness sit)</i>

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PROSECUTOR	Jane Russell, you are a Constable with the Western Australian Police Force?
RUSSELL	Yes.
PROSECUTOR	Where are you currently stationed?
RUSSELL	I am currently stationed at the Perthville Police Station.
PROSECUTOR	Were you on duty on February 1?
RUSSELL	Yes. While I was on duty I received information over the police radio to attend at Garden Street, Perthville in relation to stolen property.
PROSECUTOR	What happened when you attended?
RUSSELL	I was approached by a man who I now know to be George Shine and a woman who I now know to be Mary Green.  As a result of the information they gave me I attended 29 Parkside Way, Perthville where the accused lives.
PROSECUTOR	Was the accused person there when you arrived?
RUSSELL	Yes. Mr Smart answered the door. I informed him that I was there in relation to a complaint made about stolen property. He invited me in to his house so we could discuss the matter.
PROSECUTOR	Did you notice anything once you entered the house?
RUSSELL	In the corner of the front sitting room I noticed a green Makita D950 hedge trimmer. This was the same make and model that was reported as stolen from Mr Temple's house.
PROSECUTOR	Did you speak to the accused in relation to the hedge trimmer.
RUSSELL	Yes. He said, "That belongs to Mr Temple. I made a big mistake and I wanted to make things right but I haven't had time."
PROSECUTOR	What did you do next?
RUSSELL	I informed Mr Smart that he would be charged with stealing the hedge trimmer and would be required to appear in court at a later date.
PROSECUTOR	Nothing further, Your Honour. <b>(sits)</b>
MAGISTRATE	<b>(Looks to Defence)</b> Is there any cross-examination?
DEFENCE	<b>(Stands)</b> Yes, Your Honour. <b>(Faces Witness)</b> You said in your evidence that Mr Smart said he made a terrible mistake – did you ask him what he meant by that?

RUSSELL No.

DEFENCE You found the hedge trimmer in the front sitting room?

RUSSELL Yes.

DEFENCE Was it hidden, or concealed by anything?

RUSSELL No. It was just leaning up against a wall near the front door.

DEFENCE Did you inspect whether it was in working condition when you found it?

RUSSELL No, not straight away but when we seized it and placed it in the evidence bag I noticed that it looked like something was jammed inside it.

DEFENCE Did you ask Mr Smart about the condition of the tool?

RUSSELL No.

DEFENCE *(Faces Magistrate)* Nothing further, Your Honour. *(sits)*

MAGISTRATE *(Looks to Prosecutor)* Any re-examination?

PROSECUTOR *(Stands)* Yes, Your Honour. *(Faces Witness)* Why didn't you ask Mr Smart about the 'big mistake'?

RUSSELL He was not yet under caution. I asked him to come to the station to discuss the matter but he refused to participate in a video record of interview.

PROSECUTOR *(Faces Magistrate)* No further questions. *(sits)*

MAGISTRATE *(Looks to Witness)* Thank you, Constable. That completes your evidence. You are free to go.  
*(Witness stands and returns to seat)*

PROSECUTOR *(Stands)* That is the case for the Prosecution, Your Honour. *(sits)*

MAGISTRATE *(Looks to Defence)* Does the Defence wish to call or adduce any evidence?

DEFENCE *(Stands and faces Magistrate)* Yes.  
  
Your Honour, identity is not an issue in this trial. We do not dispute that Mr Smart was seen leaving Mr Temple's house on 1 February, nor do we dispute that Mr Smart left with Mr Temple's hedge trimmer.

The issue in this trial is whether Mr Smart had the intention to permanently deprive the owner of the property.

I call James Smart.

*(Smart stands and walks to witness box. Orderly sits.)*

**JSO** *(Stands)* Please read the affirmation.

**SMART** I do solemnly, sincerely and truly declare and affirm that the evidence that I shall give in this case shall be the truth, the whole truth and nothing but the truth.

**JSO** Please be seated.

*(JSO and Smart sit)*

**DEFENCE** *(Stands)* Mr Smart, where do you live?

**SMART** I live at 29 Parkside Way, Perthville.

**DEFENCE** Do you work?

**SMART** I am studying Horticulture at Perthville TAFE so I try to do some odd jobs and some gardening when I am not at TAFE.

**DEFENCE** Have you ever worked for Simon Temple?

**SMART** Yes. Mr Temple called me about three months before this incident and asked me to help him around the house and in the garden.

**DEFENCE** Did he tell you exactly what he wanted you to do?

**SMART** Yes. The first time that I went to his house we wrote out a list of jobs. The jobs on the list were mowing the front yard and the backyard, wiping the cobwebs from the eaves and weeding the garden and trimming the hedges.

**DEFENCE** What happened on 1 February?

**SMART** Mr Temple was away on the 1 of February, but he had asked me to come by to do the gardening while he was out of town.

I arrived at his house at about 2.30pm. After finishing some other jobs I got Mr Temple's Makita hedge trimmer out of the shed to fix up the hedges along the back fence.

I had been cutting them for about 5 minutes when the trimmer made a loud noise and seized up very suddenly.

**DEFENCE** What did you do then?

- SMART** I panicked! About two months before this the lawnmower had broken while I was using it and Mr Temple got very upset with me. He wanted me to take better care of his things.
- When the hedge trimmer broke I couldn't believe it and I really didn't want to get in trouble from Mr Temple again.
- DEFENCE** So what did you do?
- SMART** I thought that maybe I could get it fixed before he returned from his trip so I quickly closed the shed door and picked up the hedge trimmer and left Mr Temple's.
- DEFENCE** Why did you leave in such a hurry?
- SMART** It was late in the day and I wanted to try to get it to the repair shop before closing time.
- DEFENCE** Did you make it?
- SMART** No. I was too late.
- DEFENCE** What did you do then?
- SMART** I took the hedge trimmer to my house to keep it safe until the repair shop opened in the morning.
- DEFENCE** What were you planning on doing with the hedge trimmer once you had it repaired?
- SMART** I wanted to get it back to Mr Temple's place as soon as I could. I planned on telling him that it had broken, but I thought maybe if I could get it fixed first he wouldn't be as mad.
- DEFENCE** Why did you take the hedge trimmer from Simon Temple's house?
- SMART** So I could fix it and return it before he got home from his holiday.
- DEFENCE** Before this incident had you ever worked at Mr Temple's house while he was away?
- SMART** Yes, about three times. Mr Temple likes to have the garden tidy when he returns.
- DEFENCE** Have there been any other problems while Mr Temple has been away?
- SMART** No. He has been very happy with my work.
- DEFENCE** *(Faces Magistrate)* Nothing further, Your Honour. *(sits)*
- MAGISTRATE** *(Looks to Prosecutor)* Any cross-examination, Sergeant?

- PROSECUTOR** (*Stands*) Yes, Your Honour. (*Faces Witness*) Mr Smart, you say you took the hedge trimmer to get it fixed?
- SMART** Yes.
- PROSECUTOR** But by the time you got there, the shop was closed?
- SMART** Yes.
- PROSECUTOR** Did you take the hedge trimmer to another shop?
- SMART** No, I didn't think there would be time as it was quite late in the evening.
- PROSECUTOR** Did you take it back to Mr Temple's house?
- SMART** No.
- PROSECUTOR** Did you call Mr Temple to tell him what the problem was?
- SMART** No. I wanted to get it fixed first and then talk to him when he got back.
- PROSECUTOR** So you just took it and left it in your lounge room?
- SMART** Just until I could get it fixed.
- PROSECUTOR** I put it to you that you had no intention of returning the hedge trimmer to Mr Temple. Isn't that the case?
- SMART** No. I just wanted to fix it before I took it back.
- PROSECUTOR** (*Faces Magistrate*) Nothing further, Your Honour. (*Sits*)
- MAGISTRATE** (*Looks to Defence*) Any re-examination?
- DEFENCE** (*Stands and faces Magistrate*) Yes, thank you, Your Honour. (*Faces witness*) Mr Smart, why did you not take the hedge trimmer back to Mr Temple's house?
- SMART** It was quicker and easier to take to my house so I could get it to the repair shop first thing in the morning.
- DEFENCE** (*Faces Magistrate*) Nothing further, Your Honour (*Sits*)
- MAGISTRATE** Mr Smart, you may return to your seat.  
  
(*Smart leaves witness stand and returns to seat at bar table*)
- DEFENCE** (*Stands*) That is the case for the Defence, Your Honour.
- MAGISTRATE** (*Looks to Defence*) You may begin your closing address.

**DEFENCE**

**(Stands)** As Your Honour is aware, before you can convict Mr Smart of this offence you must be satisfied beyond a reasonable doubt that he is guilty.

Mr Smart had arranged to do Mr Temple's gardening and he had permission to be there while Mr Temple was away. On 1 February, the hedge trimmer that Mr Smart was using broke and he simply took it to be fixed.

He had no intention of keeping the hedge trimmer and told us in his evidence that he was going to fix it before returning it and telling Mr Temple about the problem when he returned.

Given that Mr Smart did not have an intention to permanently deprive Mr Temple of his property, it is my submission that Your Honour should find Mr Smart not guilty. **(sits)**

**MAGISTRATE**

**(Looks to Prosecutor)** Please present your closing address, Sergeant.

**PROSECUTOR**

**(Stands)** Your Honour, Mr Smart removed the hedge trimmer from Mr Temple's property without his permission. Mr Smart accepts that he did not call Mr Temple to tell him that he was going to take it and he was seen hurrying away from the house with the hedge trimmer.

The hedge trimmer was then found in Mr Smart's lounge room. We submit that Mr Smart did not have permission to take the hedge trimmer and had no intention of returning it to Mr Temple. We ask that Your Honour find Mr Smart guilty. **(Sits)**

**MAGISTRATE**

Mr Smart, it is alleged that you stole a hedge trimmer from Mr Temple's house. Like any person accused of a criminal offence, you are presumed to be innocent until proven guilty. The prosecution have the responsibility of proving you guilty, and they must prove your guilt beyond a reasonable doubt.

After listening to the evidence I am satisfied that you had an arrangement to work for Mr Temple and that you were at his house for that purpose on 1 February. I am also satisfied that you removed the hedge trimmer from his property and the same hedge trimmer was later found in your house.

However, I am not convinced beyond a reasonable doubt that you intended to keep the hedge trimmer or that you intended to permanently deprive Mr Temple of it. I accept your evidence that you took the hedge trimmer to be fixed and that you were planning to return it to Mr Temple.

Mr Smart, I am not satisfied beyond a reasonable doubt that you stole the hedge trimmer and I find you not guilty.

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ORDERLY

*(Stands)* All rise. This Magistrates Court is now adjourned.

*(Everyone in court stands. Magistrate bows. Everybody else bows. Magistrate leaves the courtroom)*