

Mock Trial Competition Case Materials 2017 Grand Final Round

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 **Murdoch**
UNIVERSITY

The Law Society of Western Australia

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State of Western Australia v Diesel

Case summary

Vincent Diesel ('the accused') has been charged with stealing under section 378 of the *Criminal Code Act Complication Act 1913* (WA) ('the Criminal Code'). The accused disputes that he committed the offence, with the Defence case resting on mistaken identity. The Prosecution case on the other hand, rests on 'circumstantial identification evidence'.

The Prosecution must satisfy 3 elements to prove stealing:

- 1) There was property which was capable of being stolen
- 2) This stealing was done by taking or converting the property
- 3) The stealing was done with fraudulent intent.

The prosecution and the defence will receive the following:

1. Summary
2. Legal notes;
3. Prosecution Notice:
4. Statement of the First Witness for the Prosecution – [David Wayne Johnson] – male.
5. Exhibit marked DWJ1
6. Statement of the Second Witness for the Prosecution – [Lara Ashcroft] – female.
7. Statement of the First Witness for the Defence – [Vincent Diesel (Defendant)] – male.
8. Statement of the Second Witness for the Defence – [Elaine Bolt] – female.
9. Exhibit – invoice for tutoring

Please note:

The above outline is also the order of appearance.

The gender of each witness is fixed in order to avoid difficulties in references to "he/she" etc. Students playing the part of a witness are to adopt the role of male or female as indicated.

The exhibits are to be tendered into evidence "by agreement".

Legal Notes

Criminal Code Act Compilation Act 1913 (WA)

370. Things capable of being stolen

Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

371. Term used: steal

- (1) A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person any property, is said to steal that thing or that property.
- (2) A person who takes anything capable of being stolen or converts any property is deemed to do so fraudulently if he does so with any of the following intents, that is to say —
 - (a) An intent to permanently deprive the owner of the thing or property of it or any part of it;
 - ...
- (3) The taking or conversion may be fraudulent, although it is effected without secrecy or attempt at concealment.
- ...
- (6) The act of stealing is not complete until the person taking or converting the thing actually moves it or otherwise actually deals with it by some physical act.

378. Penalty for stealing

Any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for 7 years.

Circumstantial Identification Evidence

Is evidence that asserts that the general appearance or some characteristic; such as age, race, stature, colour, voice or distinctive mark of gait, of the accused is similar to that of the person who committed the crime: *Festa v The Queen* (2001) 208 CLR 593, 611 [56] (McHugh J).

Such evidence may be used, along with other evidence to show that the accused was the person who committed the offence: *Festa v The Queen* (2001) 208 CLR 593, [56] (McHugh J) cited in *Dair v Western Australia* (2008) 36 WAR 413, 461 [211] (Miller JA).

The Prosecution case is circumstantial, and therefore the Court will only convict the Accused if satisfied their guilt is the only reasonable explanation in all the circumstances.

In *Stevens v the Queen* (2005) 227 CLR 319 at [25], McHugh J said:

“As I have indicated, the prosecution case was a circumstantial evidence case. Such a case requires a direction to “the jury that, if there is any reasonable hypothesis consistent with the innocence of the [accused], it is their duty to acquit.” (*Peacock v The King* (1911) 13 CLR 619 at 630.) In determining whether a reasonable hypothesis exists, the accused is not required to establish by inference that he or she is innocent.”

Criminal Procedure Regulations 2005 Prosecution Notice

Western Australia <i>Criminal Procedure Act 2004</i> District Court at PERTH No: 1027 of 2017		Prosecution notice	
Details of alleged offence ¹	Accused	Vincent Diesel	
	Date or period	8 November 2016	
	Place	Corner of Daffodil Avenue and Blossom Street, Floral Heights	
	Description	Stealing a Maths Specialist Exam Paper from a School Curriculum Standards Authority WA Integrity and Enforcement Manager whilst wearing a 'morph-suit' at approximately 7:00AM.	
	Written law	Section 378 <i>Criminal Code Complication Act 1913</i> (WA)	
Notice to accused	You are charged with the offence described above, or the offences described in any attachment to this notice. The charge(s) will be dealt with by the above court.		
Accused's details ²	Date of birth	8 May 1997	Male
	Address	12 Jasmine St, Floral Heights WA 6030	
Prosecutor ³	Peter Swift		
Person issuing this notice	Full name	Rita Court	
	Official title	Registrar	
	Work address	Level 11, David Malcolm Justice Centre 28 Barrack Street PERTH WA 6000	
	Work telephone	9421 5333	
	Signature	<i>R Court</i>	
Witness's signature ⁴	<i>BTRidge</i> Prescribed court officer		
Date	This prosecution notice is signed on 4 February 2017		

DAVID WAYNE JOHNSON

States

1. I am employed by School Curriculum and Standards Authority WA (**Authority**) in the role of Manager, Integrity and Enforcement.
2. Before taking up this role I was a Captain in the Australian Defence Force, 3RAR. On my third overseas deployment I was wounded in the knee, leaving me with a permanent limp. I decided to pursue a civilian career.
3. During the 2016 final year WACE exams one of my duties was to oversee the secure delivery of exam papers and answer guides to examination centres and marking centres respectively.
4. On Tuesday 8 November 2016 I tasked myself to convey the exam papers for the Mathematics Specialist course to Floral Heights High School, and to then continue on to the Authority's Floral Heights branch to deliver the answer guides for that exam.
5. At precisely 0750 I disembarked from my vehicle approximately two clicks from Floral Heights High School and proceeded towards my objectives on foot.
6. My knee hurts when I walk. For this reason I ensure that I take 15,000 steps every day. Pain is weakness leaving the body, and I will not tolerate weakness in my body.
7. I carried the exam papers and answer guides in a briefcase securely fastened to my left wrist. This left my dominant right hand free to defend myself.
8. At 0804 I reached the northern end of Blossom Street and turned westward onto Daffodil Avenue, approximately half a click from Floral Heights High School. As I rounded the corner I was attacked.
9. The ambush was well-timed. A corner brick wall obscured my sightlines. The assailant leveraged this cover to achieve the element of surprise. The footing is also poor – uneven artisanal cobblestones and decorative bower vines.
10. The assailant struck me with extreme force: I found myself on the ground. I am not easy to take down.
11. I must have twisted in the act of falling as I found myself face down on the pavement. I was briefly stunned. I may have lost consciousness for a moment.
12. My training kicked in and I immediately regained my feet. By this time the assailant had almost made his escape. I caught a brief glimpse of him disappearing down a side street, Periwinkle Lane.
13. I saw only the left side of my assailant's body – his left leg, left arm, and a portion of his upper torso. He was clothed in skin tight dark clothing, all of the same colour. I am confident my assailant was a male from the proportions of the body that I could see. I could not see his face or head. I expect he was also wearing a mask or face covering of some description. I am not sure if he was armed.
14. My immediate thought was to call in air support. Dismissing that option, I instead decided to give chase. However, at this point I saw that my briefcase had sprung open on contacting the ground, leaving its contents strewn across the pavement.
15. I made the tactical decision to secure the papers and ensure they arrived at their destination on time.

16. I left the scene and headed for Floral Heights High School. I delivered the papers at precisely 0826. It wasn't until I later arrived at the Authority's Floral Heights branch that I realised one of the answer guides had been taken.
17. I returned to the corner of Daffodil Avenue and Blossom Street, but did not locate the missing paper or any clues as the identity of my assailant.
18. On 12 December 2016, after the exams had been marked, I searched the Authority's records for suspicious marks or other irregularities.
19. Attached marked **DWJ1** is a summary of my findings. Those findings led me to investigate Vincent DIESEL, a student at Floral Heights High School known for making trouble.
20. With the permission of the School Principal, I searched DIESEL's locker and located a skin-tight dark blue lycra full-body outfit. Further inquiries revealed that this is known as a "morph suit".
21. I have since surveilled DIESEL. He is tall and athletic. I believe that, with the benefit of surprise, he may have been able to knock me over.

DWJ1

Summary of review of Mathematics Specialist 2016 exam results

Students with the highest discrepancy between school-year marks and exam results:

Student	School-year mark	Exam result	Discrepancy
Ava Valentine	76	92	+16
Vincent Diesel	60	95	+35
Tamara Bennell	51	72	+21
Oliver Blee	55	74	+19
Flynn Walker	57	73	+16

Highest exam results:

Student	Exam result
Vincent Diesel	95
Lara Ashcroft	94
Grant Pobar	92
Ava Valentine	92
Cyril Jackson	90

Lara ASHCROFT

States

1. In 2016, I was a year 12 student at Floral Heights High School, where I studied for five years.
2. Over those five years I received consistently excellent grades in all my classes, so I decided to take on what I thought were the hardest subjects in Year 12.
3. Last year, I completed Maths Specialist, Maths Methods, French, English Literature, Chemistry, and Physics. I had already completed Music in 2015.
4. While I was happy with my ATAR of 99.9, and now am studying Medicine at the University of Melbourne, I am still perplexed at how Vincent Diesel managed to beat me in Maths Specialist.
5. When I was asked to give this statement, I was shown a list of the exam results obtained by the other students in my year.
6. Because Vinny received a mark of 95%, he received the prize that Floral Heights High awards for the highest mark in the exam, which I thought should have been mine. I certainly don't think Vinny deserved it.
7. I came to know Vinny well in the Maths Specialist classes we shared during 2016. He often read comics under the desk and sometimes annoyed me and the other students. I don't remember him paying much attention to our teacher.
8. That seemed silly to me, because I had heard Vinny was repeating some of his year 12 subjects, including Maths Specialist, which he had failed in 2015.
9. I also remember one other thing that Vinny did during the year that made me think he wasn't focused on school. In June, at our athletics carnival, Vinny disappeared around the time the whole school gathered to watch the Year 12 100m race.
10. Then, just as the race started, I saw Vinny run across the track in an indigo full-body morph suit. The person caused several of the runners to collide and trip over.
11. Mr Yorgi, the Politics teacher, tried to stop Vinny. Mr Yorgi is a big man – he told me he was a professional wrestler in his youth. Vinny ran right through him and left him sprawled on the floor.
12. On the morning of the exam, at about 8:15am, I was sitting in our school courtyard going over the notes which I planned to bring into the exam - we were each allowed 2 double-sided sheets of notes for the Maths Specialist exam.
13. It was at about that time that I saw Vinny arrive through a gate at the side of the school. I noticed that his hair was wet and messy. I assumed he had been running.
14. I watched Vinny walk towards the toilet block which is outside our school examination hall. It looked like Vinny checked behind him as he went inside, as if he didn't want to be seen. He looked really nervous. I'm quite sure Vinny was carrying his bag with him at the time.
15. I went back to looking at my notes, and about 25 minutes later – just before the exam was set to start – I remember seeing Vinny come out of the toilets. I thought it was weird he spent so long in there.
16. In the exam room I sat a few seats behind Vinny.
17. While I was doing the exam I was focused on getting everything right. Like anyone who had actually studied, I hardly needed to look at my notes.

18. I remember that whenever I looked up, which was probably about 5 times, Vinny was reading his notes. It looked like he was just copying from them.
19. After the exam was over, Vinny left quickly. I tried to see what was written on his notes. I saw that the writing was quite messy, as if it had been written quickly, and I thought I recognised part of it as being an answer to a question on the exam.
20. I haven't seen Vinny since then.

Vincent Mark DIESEL

States

1. In 2016, I was a Year 12 student at Floral Heights High School. I was repeating Year 12 as I had not achieved the marks I had hoped for in 2015.
2. I was studying Maths Specialist, Biology, Chemistry, Physical Education, and Spanish.
3. I am now enrolled at the University of Western Australia, studying a sports science degree.
4. I failed Maths Specialist and Biology in 2015. Both of these are prerequisites for my degree which is why I had to repeat them.
5. I am a dedicated athlete. Running is my particular favourite sport. I specialise in 1500m races.
6. I don't really enjoy maths. I find it difficult to pay attention in class or remember all the stupid formulas. Noise and other people talking is distracting to me. I can concentrate better when it is quiet.
7. By the middle of the year, I was only hovering around a 50 in maths. I was growing increasingly concerned that I wasn't going to pass the exam a second time.
8. I started taking tutoring outside of classes to help with my grades, including three times per week in maths.
9. I knew I wouldn't be able to repeat Year 12 again. I had been blamed for an incident in June where someone in a purple morph suit ran across the athletics track during the Year 12 100m race.
10. I am a mascot for my younger brother's soccer team. It requires me to wear a blue morph suit. I don't have a purple morph suit.
11. Lara Ashcroft's little brother is on the same team. She knows I'm the mascot. Lara has hated me since I refused to go to the 2015 formal with her. She accused me of being the one in the purple morph suit.
12. Lara often stares at me over those stupid thick glasses of hers. We all know she can't see anything except the paper in front of her if she's not wearing them.
13. She is so obsessed with me. She thinks everything bad that happens to her is my fault. She even blamed me for stealing her diary, though she later admitted she'd just left it at home! I wish she would just move on.
14. She always brags about how smart she is. She's insufferable. I can't believe she thought I would ever go to the formal with her.
15. On the morning of the Maths Specialist exam, I was feeling confident and well-prepared.
16. We were allowed to take notes into the exam. My tutor had been really helpful and I felt confident. We prepared my double-sided sheet of notes together the night before. My tutor told me I was going to ace it.
17. I had also sat the Maths Specialist exam before so I felt like I knew what I could expect.
18. I decided to run to school to take the exam. Running always focuses my mind and is a stress release for me.
19. I wore a black shirt and shorts to run to school, and had my headphones in. Between the music and my focus on my exam, I was barely paying attention to what was going on around me as I ran. I couldn't tell you what route I took or who I saw.

20. I arrived at school at about 8:00am. I had arranged to meet my friend Paul at the toilets near the exam hall at about 8:30. I was a bit early, so I decided to go into the shower block and have a shower. I was sweaty from my run and had spare clothes in my backpack.
21. I had my shower and then met Paul.
22. Lara followed me into the exam room and sat right behind me. It was weird. Luckily she'd taken her glasses off to focus on the exam paper, so I knew she couldn't really see what I was doing anymore.
23. I found the exam long, but not difficult. I referred to my notes a lot: having the formulas already written out was really helpful.
24. I left my exam thrilled with how well it had gone.
25. I was even more excited when I received the exam back and I had achieved the highest score at my school. I am still very proud of myself for my hard work paying off.
26. My mum and dad were so happy that they gave my tutor a \$500 bonus.
27. The best part was the look on Lara's face when I got the Maths award at our graduation.

Elaine BOLT

States

1. I am employed by Floral Heights High School as a Physical Education teacher.
2. I started my Sports Science and Secondary Teaching degree at Mulberry University in 2008, which I completed in 2012.
3. I have been employed by Floral Heights since 2013.
4. Before my teaching role, I competed in the 1996 Atlanta Olympics, 2000 Sydney Olympics and 2004 Athens Olympics. My event was 1500 metres. I received Gold each time I competed. Unfortunately, I had to retire in 2006 due to knee complications.
5. Whilst I would be lying to say that I miss competing, I do enjoy my job as a teacher. Recently, I have taken up mentoring Vincent Diesel, who is in my year 12 Physical education class. Vincent is the top student in his class and excels at running.
6. I think there's some friction between Vincent and some of the teachers and other students – particularly that girl with the glasses – but he's a good kid. I'm sure none of it is his fault.
7. I hold a period zero class on Tuesdays and a period six class on Thursdays for students who want to get extra practice in before their Practical (performance) assessment.
8. Vincent has attended almost all of these additional optional classes, except for 8 November 2016 when he had his Maths exam. As result of attending these classes, Vincent has bettered his time for his 1500m by a minute. I believe that he would fare well in the Olympics if he continues like this.
9. As my passion is athletics, I was put in charge of the Athletics Carnival in June, which took place on the school oval.
10. It was a wonderful day, with the perfect weather. It took me back to the thrill of competing at the Olympics.
11. The students were allowed to dress in their House colours for the day which consists of blue, purple, yellow, red and green. Even some of the teachers got into the spirit of dressing up. The rest of the Physical Education teachers and me thought it would be funny to attend in full Lycra of our Tute group's colour.
12. I remember that there was an incident where someone ran across the running track during the year 12 100m race. It was quite sad. I think some of the runners attempted to dodge the streaker and ended up bumping into the person in the next lane. I noticed that one of the students had a loose green shoelace which they tripped over. I don't think the school ever determined who the streaker was.
13. I have a good relationship with all my students and will often discuss with them their other subjects. Vincent told me in term two that he was concerned about his grades for his Maths Specialist unit. I suggested to Vincent that he may like to get some tutoring. I spoke to my colleagues and got a recommendation: I was told this tutor had performed miracles before.
14. On 8 November 2016, I was returning to the gym with the student from my period zero class. The gym doubles as an exam hall for students, with there being bathrooms at the rear for students to change and shower after their lesson. When exams are on, Physical Education students can only enter the change rooms from the outside of the building, rather than going through the gym.

15. As I was returning, I saw Vincent leaving the change rooms at around 8:45 am. I always arrange to finish class about ten minutes beforehand so that students have time to change.
16. I knew that Vincent had his Maths exam that morning so I wished him luck.
17. I passed Vincent later during the day to ask him how his exam went. He told me that he was really happy: "Everything just fell into place". I told Vincent that it was good to hear and that I was glad that all of his hard work was paying off.
18. I don't understand why Vincent is being accused of stealing the exam papers. Vincent has been nothing but diligent in his two final semesters. I think that it is outrageous that the WA School Curriculum and Standards Authority are pursuing this. What type of message does this show to other students who make an honest attempt to turn their result around?

Dr Anna Poindexter

PO Box 74
Boronia Grove WA 6019

INVOICE



Bill To
Vincent Diesel
12 Jasmine St
Floral Heights WA 6030

Invoice # 4
Invoice Date 21/10/2016

DESCRIPTION	AMOUNT
Mathematics Tutoring Services @ \$75 per session August 2016 (weekly sessions) September 2016 (twice weekly sessions) October 2016 (three sessions per week)	1,575.00
TOTAL	\$1,575.00

Terms & Conditions
Payment is due within 15 days