

## APPELLATE ISSUES

### State v. Dennis

Assume the Defendant was convicted under Va. Code Sections 18.2-152.4, 18.2-137 and 18.2-138. Defendant appealed on the following issues:

- I. The evidence was insufficient as a matter of law to convict Defendant beyond a reasonable doubt of Va. Code Section 18.2-152.4.

Va. Code Section 18.2-152.4

Hyde v. Commonwealth, 217 Va. 950 (1977)

Powers v. Commonwealth, 211 Va. 386 (1970)

Cameron v. Commonwealth, 211 Va. 108 (1970)

- II. The evidence was insufficient as a matter of law to convict Defendant beyond a reasonable doubt of Va. Code Sections 18.2-137 and 18.2-138.

Va. Code Section 18.2-137

Va. Code Section 18.2-138

Hyde v. Commonwealth, 217 Va. 950 (1977)

Powers v. Commonwealth, 211 Va. 386 (1970)

Cameron v. Commonwealth, 211 Va. 108 (1970)

## Bench Memorandum

### State v. Dennis

#### I. STATEMENT OF FACTS/CASE BELOW

Karen Dennis was a straight “A” student at Virginia Beach High School. She was being considered for a scholarship to college based upon her academic performance. In her computer course, taught by Marshall Taylor, however, Dennis was told she was going to receive a “B” because she had not completed her homework assignments. Dennis had been angered and called Taylor a “fascist.” Taylor was not a popular teacher and had many students who resented him.

On the evening of February 6, 1998, someone broke into Taylor’s computer office, accessed his main computer between 9:18 p.m. and 9:22 p.m., and vandalized the office and spray painted in red paint “Taylor is a fascist.” Taylor discovered the damage the following morning and also noticed that Dennis’ grade had been changed from a “B” to an “A.” No other grades had been changed. To access the computer, a special code was needed, which was in a file cabinet near the principal’s office. The key was kept in the file cabinet; the computer access code was kept under the label marked “Records.” Three students had access to the cabinet during each of the six periods of the school day. The same cabinet contained all student locker combinations under the label “Lockers.”

Upon discovering the damage, Taylor, together with the principal, Anne Noguchi, informed the police. The school guidance counselor and the main office clerk were also informed. The police advised that no one inform anyone as to what had transpired. Dennis’ locker was searched and a red can of spray paint, red-stained gloves, a flashlight and the computer access code for grades were found in her locker. Dennis was confronted with the materials found in her locker and stated “I don’t know anything about this stuff.”

A witness living close to the school, Todd Castillo, heard his dog bark during a movie. When the movie ended at 9:30 p.m. he walked his dog and saw a dim light in the southernmost building of the school. Castillo then saw a girl dressed in dark clothes, whom he was unable to identify, leaving campus and proceeding north. Dennis was wearing a dark skirt and light colored blouse that evening.

A map of the school and surrounding area is attached as Appendix 1.

The jury convicted Dennis of Va. Code Section 18.2-152.4 Computer trespass, Va. Code Section 18.2-137 Injuring, etc., any property, monument, etc. and Va. Code Section 18.2-138 Injuries to public buildings, etc. Dennis appeals and claims the following errors in the court below:

1. The evidence was insufficient as a matter of law to convict Defendant beyond a reasonable doubt of Va. Code Section 18.2-152.4.

Va. Code Section 18.2-152.4 is attached as Appendix 2. The cases to be used by the students in arguing the appeal are:

Hyde v. Commonwealth, 217 Va. 950 (1977)  
Powers v. Commonwealth, 211 Va. 386 (1970)  
Cameron v. Commonwealth, 211 Va. 108 (1970)

2. The evidence was insufficient as a matter of law to convict Defendant beyond a reasonable doubt of Va. Code Sections 18.2-137 and 18.2-138.

Va. Code Sections 18.2-137 and 18.2-138 are attached as Appendix 3. The cases to be used by the students in arguing the appeal are:

Hyde v Commonwealth, 217 Va. 950 (1977)  
Powers v. Commonwealth, 211 Va. 386 (1970)  
Cameron v. Commonwealth, 211 Va. 108 (1970)

## II. DISCUSSION OF THE CASES

In Cameron v. Commonwealth, 211 Va. 108 (1970), the Virginia Supreme Court reversed a robbery by violence conviction which was based upon identification of the defendant by his clothes. The Court held that the standard when the sufficiency of the evidence is challenged after conviction, is to view the evidence “in the light most favorable to the Commonwealth, granting all reasonable inferences fairly deducible therefrom.” The Court further noted that “[t]he judgment should be affirmed unless ‘it appears from the evidence that such judgment is plainly wrong or without evidence to support it.’” Id. at 110.

The Court continued:

It is well settled in Virginia that to justify conviction of a crime, it is not sufficient to create a suspicion or probability of guilt, but the evidence must establish the guilt of an accused beyond a

reasonable doubt. It must exclude every reasonable hypothesis except that of guilt. The guilt of a party is not to be inferred because the facts are consistent with his guilt, but they must be inconsistent with his innocence. Id. at 110-11.

In Powers v. Commonwealth, 211 Va. 386 (1970), the Virginia Supreme Court reversed a conviction for reckless driving which had been based upon a state trooper's reconstruction of the accident where there were no witnesses. In addition to referring to the standards enunciated in Cameron, the Court stated that "[i]t is elementary that the burden is on the Commonwealth to prove every essential element of the offense beyond a reasonable doubt. The evidence must exclude every reasonable hypothesis of innocence and be consistent only with the guilt of an accused." Id. at 388.

In Hyde v. Commonwealth, 217 Va. 950 (1977), the Virginia Supreme Court reversed rape and second degree murder charges against the defendant because the evidence was insufficient as a matter of law. The Court held that in spite of inconsistent statements by the defendant, the evidence was completely circumstantial and did not provide sufficient evidence to prove rape or second degree murder charges. The Court held that where "[i]nconsistencies and contradictions in statements made by an accused may support an inference of guilty knowledge and raise a suspicion of guilt, but convictions may not rest upon suspicion." Id. at 954.

### III. DISCUSSION OF THE FACTS

Dennis' attorneys are expected to argue that the case against Dennis with regard to all three code sections is purely circumstantial and insufficient as a matter of law. No witness has placed Dennis at the scene of the crime. In fact, no witness has placed Dennis in the vicinity. The locker in which the incriminating items were found could be accessed by many students, as well as school officials. The teacher whose room was vandalized was unpopular with many students. Dennis did not admit to anything and did not have any inconsistent statements. Dennis learned the word "fascist" in a class which any other student could have learned the word. Finally, there is no evidence that Dennis' grade was changed the night the vandalism took place or that Dennis changed the grade. The existence of the piece of paper with the computer access code could have been obtained by any student and would have been very easy to memorize, especially for such a bright student.

The Commonwealth is expected to argue that the presence of the incriminating evidence in Dennis' locked locker, coupled with access on the computer at the time of the break-in and only Dennis' grade changed, are sufficient to convict Dennis. In addition, since the students had not been informed of the break in, Dennis' behavior in denying knowledge of the incriminating evidence was very suspicious. The students are also expected to argue that Dennis needed the grade changed, especially since she was trying to get a scholarship in computers, and it is highly unlikely that any other student would have used the term fascist so close to Dennis' use of it.

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