

MODEL JUDICIARY PROGRAM SCRIPT

Commonwealth

v.

Dennis

WITNESSES

Prosecution Witnesses

Witness 1 – Marshall Taylor, computer teacher

Witness 2 – Anne Noguchi, principal

Witness 3 – Detective Kathleen Young, investigating officer

Witness 4 – Todd Castillo, neighbor

Defense Witnesses

Witness 1 – Karen Dennis, defendant

Witness 2 – David Greenburg, main office clerk

Witness 3 – Craig Johnson, counselor

STATEMENT OF FACTS

Toward the end of the "Movie of the Week" on February 8, 2010, Todd Castillo's Airedale, James, began barking. This alerted Castillo to the sound of breaking glass coming from Virginia Beach High School across the street. He peered out the window but did not see anything suspicious. When the movie was over at 9:30 p.m., Castillo took James outside for a walk. As the two were walking in the neighborhood, Castillo saw a dim light through the blinds of a window in the southernmost building at Virginia Beach High School. Proceeding north on Oak Street, Castillo noticed a female figure dressed in dark clothes leaving campus and heading north. Castillo and James returned to the house.

Early the next morning, February 9th, Marshall Taylor, Virginia Beach High School's computer teacher, picked up his messages in the main office and proceeded to the separate bungalow that housed the school's computers. As he walked to his room, he thought about the day ahead of him, planning to use his free first period to work on the new software program he was developing. As he approached the bungalow, he smiled to himself, thinking about how proud he was of what he affectionately referred to his "refuge." He knew that some of the students mocked him by calling it a "refuse," but this did not bother him much--he knew his course was valuable.

As Taylor got closer to his "refuge," he saw something was wrong. The frosted window in the bungalow's front door was shattered. Taylor began running toward the door. It swung open when he touched the door knob. He was horrified by what he saw--chairs overturned, papers everywhere, drawers pulled out and other items all over the place. Red spray paint covered some desks and computers and the viewing screens on three of the student terminals were smashed. Across the west wall in the same red paint were the words "Taylor is a fascist."

As he surveyed the damage, it occurred to him to check the school's main records computer. The unit was situated behind a shoulder-high divider in the far corner of the room. As he walked around the divider he saw that the computer also had red paint on the sides, though there was none on the keys or the screen. It did not appear to be damaged in any other way.

When the computer was first installed, Taylor designed a program which would show the precise times that the computer was used. He turned the computer on. It was still working. He then checked the previous day's "log on" and "log off" notations. Taylor discovered that the records database was accessed at 9:18 p.m., and exited at 9:22 p.m. Taylor turned the power off and hurried to the principal's office to inform Principal Anne Noguchi of the vandalism and to call the police. Detective Kathleen Young arrived at 8:50 a.m. and began her investigation. Craig Johnson, Virginia Beach High's counselor, and David Greenburg, the main office clerk, were also told about the vandalism and instructed not to discuss the crime with students.

When Taylor and Noguchi returned to the room, they took inventory of the damage and estimated the loss to be between \$12,000 and \$15,000. The only good news was that nothing had been stolen.

Noguchi noted the bold red letters calling Taylor a "fascist." When she questioned Taylor about it, he agreed that it was unusual. Taylor did recall recently hearing one of his computer students, Karen Dennis, use the term after he had told her she would get a "B" in the class.

Both Taylor and Noguchi were aware, as well, that Dennis was a potential recipient of a full computer science scholarship to the State Technical College and, consequently, would be very disturbed to receive a "B." Putting this together with the fact that the records computer had been turned on the night before, they decided to check the grade entries. They accessed the Grades file with the proper code and looked for Advanced Computer Studies and Dennis' name. Sure enough, an "A" appeared on the screen where Taylor himself had entered a "B" for the fall semester grade. No other grades had been changed. Officer Young left Taylor and Noguchi to check the other buildings for forcible entry.

By this time, first period was almost over. Noguchi and Taylor decided to check Dennis' locker before questioning her. After obtaining her locker combination from the office, they went outside to the row of lockers along the main building where her locker was located.

Inside and next to her calculus book, make-up bag and what appeared to be some personal letters, they found a flashlight and a pair of gloves. Both were covered with red paint that looked like the red on the bungalow walls and furniture in the computer room. They also found a piece of paper in her locker with "Grades XX" typed on it. Both Taylor and Noguchi recognized this as the access code needed to break into the computer file of student grades. The bell rang for the second period to begin.

Noguchi had Karen summoned from her class. When she entered the Principal's office, Noguchi gestured toward the flashlight, gloves and paper laying on the desk and said, "Well?" Dennis replied, "I don't know anything about this stuff."

Noguchi then ordered Dennis to remain in the office. She asked Johnson to call Karen's mother, Gloria Dennis, before she picked up the evidence and returned to the "refuge." She joined Taylor and Detective Kathleen Young, who was completing her investigation. Young took the gloves and verified that the color on the gloves matched the red on the wall. They all returned to where Dennis was waiting. Noguchi told Karen that the items on her desk had been discovered in her locker. She said again that she had never seen them. Detective Young arrested her.

After Young read Karen her Miranda rights, she stated: "Maybe I better get a lawyer--it looks like I'm really in trouble." Conversation ceased and Detective Young led Dennis to the patrol car.

PROSECUTION WITNESS

MARSHALL TAYLOR, COMPUTER TEACHER

Last year I accepted the computer teaching position at Virginia Beach High School. I like my students but am aware that there have been complaints about my teaching style.

I arrived at work as usual on Thursday morning, February 9th. I explained that the vandalism must have been done by someone very angry at me because of the writing on the wall and because my desk had been rummaged through and papers torn up and yet nothing taken. To emphasize this point, pocket calculators and a small radio were visible, but left behind.

The only direct critical remark I have ever heard was from Karen Dennis, my brightest and most promising computer student. She became visibly angry and upset when I explained that she would receive a "B" because she never handed in any of the preliminary exercises I assigned. I had repeatedly warned her that not doing so would result in a lowered grade, even though the work she did complete was always perfect. She exclaimed that she should not be made to suffer because the rest of the class was so "stupid" and had to perform such elementary tasks.

After this conversation, I overheard Karen complaining to other students that I didn't know what I was talking about. She indicated that "he must have been a Sergeant during the Vietnam war - he treats us like a fascist."

When the new school records computer was first installed in my room, the principal requested that I provide some safeguards to prevent unauthorized entries. I established access codes, or passwords, that utilized the subject of the database, i.e., "Budget," but added on a random combination of two other digits or letters, i.e., "Budget QP." I also designed a program that was attached to the computer's internal clock to record the precise time of each file's entry and exit-- this would allow me to monitor every use of the computer. I assumed the precautions were adequate. Now, with a little hindsight, I see that it was not enough protection.

Part of my job was to enter grades into the computer. The printer had been out of order when the fall semester's grades were entered so there was no print-out of the data. I know that Karen Dennis' grade for Advanced Computer Studies was changed from a "B" to an "A" because I personally entered the "B" along with my other students' grades one week earlier.

After Detective Young left the campus, I spent the afternoon checking all student grades and found no other grade had been changed and no other parts of the database had been disturbed.

Only myself, Noguchi, the clerk and the counselor know the access code. Neither Karen Dennis nor any other student was authorized to use that computer in any way.

PROSECUTION WITNESS

ANNE NOGUCHI, PRINCIPAL

I have been principal of Virginia Beach High School for eighteen years. Prior to that, I taught science in the public school system for thirteen years.

When the school first acquired its records computer, it was placed in Taylor's classroom. I was only mildly concerned about security since Virginia Beach's crime rate was so low. I reasoned that any student clever enough to get into the grades file would not be a criminal--nonetheless, I ordered minimal precautions, which I left to Taylor's discretion. In addition, the corner of the room was blocked off where the unit was located to discourage contact when the room was occupied by students.

I felt that Karen Dennis was a very likely suspect because of her changed grade, her use of the term "fascist" and her exceptional ability with computers. In addition, I knew that Karen needed a high G.P.A. to win a college scholarship. As principal, it is my job to maintain the school's security. This includes protecting the school from vandalism and accomplishing what is necessary to uncover the vandals. Thus, I felt it was my duty to open Karen's locker.

I deliberately did not make any announcement to the student body about the vandalism and instructed the office staff not to discuss it until further notice. When Dennis was called to my office she was not told why the principal wanted to see her. I intentionally did not accuse her of anything but merely asked, "Well?" as I motioned toward the evidence removed from the locker. Dennis replied, "I don't know anything about this stuff." I believe that since Dennis answered so quickly she must have known that the vandalism had occurred.

I recognized the red paint as being the same paint used to touch up the school fire extinguishers. I was also aware that some of the paint cans were missing from the work area next to the plant maintenance building.

PROSECUTION WITNESS

DETECTIVE KATHLEEN YOUNG, INVESTIGATING OFFICER

I arrived at Virginia Beach High School at 8:50 a.m. on February 9, 2010 and reported to the principal's office. Taylor and I then examined the damage done in the computer room. The frosted pane of non-security glass in the bungalow's door had been shattered with a blunt instrument. No other windows were disturbed. I found no fingerprints.

Taylor turned on the computer to verify for me that the computer had been in use the night before and informed me of Dennis' changed grade. I'm used to investigating school vandalism calls, so I checked the other buildings just to be thorough but found no evidence of a forcible entry anywhere else.

When Noguchi and I returned to the bungalow with the paint stained flashlight, gloves, and paper found in Dennis' locker, I carefully examined the color on the evidence and the wall and concluded that they were of the same origin, I searched the bungalow area for a discarded paint can but found nothing.

I then returned, with Noguchi and Taylor, to the principal's office where Dennis was waiting. I made the arrest and read Karen her Miranda rights. Karen said, "Maybe I'd better get a lawyer-- it looks like I'm really in trouble."

I took Dennis to the police station and booked her. I carefully checked Dennis' hands for red paint but found no traces anywhere. I then returned to the campus to continue the investigation. Hoping to find a witness, I talked with all the neighbors whose homes might be within sight or sound of the school. My efforts were rewarded when I discovered that Todd Castillo, who lived on Oak Street, had been out walking his dog between 9:30 p.m. and 9:45 p.m. on the evening of February 8, 1998. I interviewed the witness, who was unable to positively identify the person he had seen leaving the school that evening.

PROSECUTION WITNESS

TODD CASTILLO, NEIGHBOR

I have been renting a one-bedroom house directly across the street from Virginia Beach High School for about one year. I was not too happy about living so close to a high school but I decided to take the tiny house because the landlord said I could keep my dog.

On the night of February 8th, I was home relaxing in front of the television set. Toward the end of "Onassis," the Movie of the Week, my Airedale, James, started barking wildly at the front door. I stuck my head out of the window that faced the street hoping to see what was disturbing the dog. I couldn't see anything, but I did hear a noise like breaking glass coming from the southern end of the school where the computer bungalow was located.

Satisfied that I was not in any danger, I returned to the movie. When it was over at 9:30 p.m., I called James, picked up the dog's leash and proceeded down the sidewalk with my dog. As I waited idly, I looked at the bungalow, where I had heard the noise earlier. I saw a dim light across the blinds of the windows that faced the street several times, possibly like a flashlight's glow.

I proceeded north toward the intersection of Elm and Oak, getting as far as the northern end of the main school building (but still on the west side of Oak Street). About ten minutes later, as I was turning back toward my house, James started barking again. I looked in the direction the dog was facing and saw a young female appear from behind the main building and head north toward the intersection of Oak and Elm. I watched as a young woman hopped over the low hedge along the north end of the school. She was wearing a dark skirt and dark blouse and had the same general build as the defendant. She was about 75 feet away from where I stood. Although there is a street light located at the intersection, I could not see very well. The woman's pace was slightly hurried but she was not running. Her arms were swinging freely and she did not appear to be carrying anything.

I took note of the young woman because it was rare to see people walking the streets at night in the neighborhood. I supposed that if there had been a group of young people leaving the campus I would have been more suspicious—I just assumed it was a student returning to school because she forgot something in her locker. I realize now that I should have notified the police of what I had seen and heard.

DEFENSE WITNESS

KAREN DENNIS, DEFENDANT

At the time of my arrest, I was a senior at Virginia Beach High School expecting to graduate with highest honors. Except for the "B" I received from Mr. Taylor in Advanced Computer Studies, I had straight "A's" in everything from Anatomy to World History. I live on Oak Street three blocks north of school in a small converted garage/guest house with my mother.

My father was killed when I was only three. Life has been difficult for my mother and I, but somehow we have always managed. My interest in computers has been a good motivator.

On the night of February 8th, I was at home studying. That night I wore a royal blue pleated skirt and a cream-colored blouse. My mother can verify this. I admit that I am not crazy about Mr. Taylor and was angry about my grade, but would never stoop to vandalizing his room. I have too much respect for computers to ever think about damaging one. Because of my overall G.P.A. I could not image one "B" would hurt my chances of receiving the college scholarship.

Certainly others share my dislike of Mr. Taylor which could be someone else's motive for the vandalism. On many occasions, I have heard other students call the computer bungalow "refuse" instead of "refuge" as Taylor prefers. I admit that it is possible that I used the word "fascist" because I learned the word during my Junior year when I took the required course in U.S. History and studied World War II.

I believe this is a frame. I see now that my impatience with the academic pace of my peers probably alienated them. I should have been more tolerant when they didn't understand the material instead of laughing at their ignorance and calling them names. Perhaps I angered someone enough to do this. Many students knew that my grade was lowered and I know it gave many of them great pleasure because they were jealous of my academic achievements. I also have not used my locker for several days. The last time I looked, the only things inside were my calculus book, make-up and diary.

Let me point out that "Grades XX" is an access code that anyone--not just someone with my computer mastery--could break. Furthermore, it is so easy to remember I would not have to write it down. I knew about the vandalism prior to entering the Principal's office because I overheard other students talking about it in the hall between first and second period. Someone had said the "refuse" was broken into and that there was red paint all over everything. I figured that what I overheard was probably true because I had seen a patrol car parked out in front of the school.

DEFENSE WITNESS

DAVID GREENBURG, MAIN OFFICE CLERK

I have worked at Virginia Beach High School for six years. Let me explain that because the school is relatively small, as is the town, security has tended to be fairly lax overall. There are four-drawer file cabinets located behind the front desk. Inside one of them is an alphabetical list of each student's locker number and combination in a file marked "Lockers." Also, locker combinations are changed every year. The access code, "Grades XX" is also in the file cabinet in a file marked "Records."

The cabinet does have a lock on it, but the key is usually kept in the lock itself--this is done for convenience since Craig Johnson, the counselor, and I use this cabinet so often. Three students work in the office during each of day's six periods. Although they are instructed not to go in the cabinet without permission, a student could easily get in and not be noticed. In fact, many other students pass the filing cabinet carrying notes and passes back and forth from the teachers' classrooms. I myself pass the cabinet daily.

On the morning of February 9th, Noguchi informed the office staff of the previous night's vandalism and told them not to discuss it with the students. I do not think anyone violated this instruction; however, it is possible that a student overheard the office employees talking about the incident.

DEFENSE WITNESS

CRAIG JOHNSON, COUNSELOR

I received my Bachelor's degree in Developmental Education in 1992 and have been a counselor at Virginia Beach High School for five years. Prior to that, I worked as manager of the personnel department for a large marketing firm.

I know Dennis well. I admire her academic ability, especially her knowledge of computers. I encouraged her to pursue her education and wrote a letter of recommendation for her for the State Technical College Scholarship. Because of Karen's mother's limited financial resources, I know that without the scholarship she would be unable to attend college. I hate to see her chances jeopardized because of this accusation.

I feel that Dennis' intelligence and sharp tongue have alienated her from many of the students. She doesn't seem to know how to relate to them. I have overheard chiding remarks directed at her and have heard Dennis respond by calling the student "stupid" and, in a mocking voice, pretend to "pity" their "ignorance."

As a counselor, I am not surprised that Dennis has had a problem with Taylor. Other students and parents have also complained about his manner and teaching style. Since Taylor is new to the teaching profession, I believe that his style will probably improve with experience.

My office joins the main office through a common door and I can validate Greenburg's testimony about the key and the file cabinet. I have seen many students behind the counter talking, even though they do not work in the office.

Despite the problems that Dennis has had interacting with others, I will vouch for her honesty. As her counselor and an expert on teenage behavior, I do not believe that she would vandalize the "refuge," damage the computers that she respects so much or change her grades, thus risking the loss of the scholarship.

JURY INSTRUCTION NO. 1

A person shall be guilty of the crime of computer trespass if he uses a computer or computer network without authority and with the intent to:

1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network;
2. Cause a computer to malfunction regardless of how long the malfunction persists;
3. Alter or erase any computer data, computer programs, or computer software;
4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
5. Cause physical injury to the property of another; or
6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any minted or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

Computer trespass shall be punishable as a Class 3 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's reckless disregard for the consequences of his act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is damage to the property of another valued at \$2,500 or more caused by such person's malicious act in violation of this section, the offense shall be punishable as a Class 6 felony.

JURY INSTRUCTION NO. 2

If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages or removes without the intent to steal, any monument erected for the purpose of making the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be guilty of (i) a Class 1 misdemeanor if the value of or damage to the property or monument is less than \$1,000 or (ii) a Class 6 felony if the value of or damage to the property or monument is \$1,000 or more. The amount of loss caused by the destruction, defacing, damage or removal of such property or monument may be established by proof of the fair market cost of repair or fair market replacement value.

JURY INSTRUCTION NO. 3

Any person who willfully and maliciously (i) breaks any window or door of the Capitol, any courthouse, house of public worship, college, school house, city or town hall, or other public building or library, (ii) damages or defaces the Capitol or any other public building or any statuary in the Capitol, on the Capitol Square, or in or on any other public buildings or public grounds, or (iii) destroys any property in any of such buildings shall-be-guilty of a Class 6 felony if damage to the property is \$1,000 or more or a Class 1 misdemeanor if the damage is less than \$1,000.

Any person who willfully and unlawfully damages or defaces any book, newspaper, magazine, pamphlet, map, picture, manuscript, or other property located in any library, reading room, museum, or other educational institution shall be guilty of a Class 6 felony if damage to the property is \$1,000 or more or a Class 1 misdemeanor if the damage is less than \$1,000.

JURY INSTRUCTION NO. 4

The defendant is presumed to be innocent of the offense with which she is charged and this presumption of innocence goes with her through the entire case, applies at every stage thereof and is sufficient to require you to find the defendant not guilty unless and until the Commonwealth upon whom the burden rests, proves her guilt beyond a reasonable doubt. It is not sufficient that facts and circumstances proved be consistent with the guilt of the defendant. They must be inconsistent with every reasonable hypothesis consistent with the innocence of the defendant.

FORM OF VERDICT

_____ We the jury find the defendant, Karen Dennis, guilty of the misdemeanor of computer trespass and fix her sentence at _____

_____ We the jury find the defendant, Karen Dennis, guilty of the felony of computer trespass and fix her sentence at _____

_____ We the jury find the defendant, Karen Dennis, not guilty of computer trespass.

_____ We the jury find the defendant, Karen Dennis, guilty of the misdemeanor injury to property and fix her sentence at _____

_____ We the jury find the defendant, Karen Dennis, guilty of the felony of injury to property and fix her sentence at _____

_____ We the jury find the defendant, Karen Dennis, not guilty of injury to property.

_____ We the jury find the defendant, Karen Dennis, guilty of the misdemeanor of damaging a public building and fix her sentence at _____

_____ We the jury find the defendant, Karen Dennis, guilty of the felony of damaging a public building and fix her sentence at _____

_____ We the jury find the defendant, Karen Dennis, not guilty of damaging a public building.

FOREPERSON