

2019 Mock Trial Grand Final - Magistrate Script

INDEX

This is a criminal case in which the defendant is charged under Section 52A(3)(c) Crimes Act and Section 117(1)(b) Road Transport Act. The charges are laid as alternative counts and the court may convict the accused of one or neither of the charges. The Court cannot convict of both charges.

The Prosecution will receive the following: -

1. Legal Notes
2. Court Attendance Notice (CAN)
3. Medical Report – Dr J. O’Neil
4. Statement of Prosecution Witness Vic Lim-Young
5. Statement of Prosecution Witness Senior Constable Mackay

The Defence will receive the following: -

1. Legal Notes
2. Court Attendance Notice (CAN)
3. Medical Report – Dr J. O’Neil
4. Statement of Defence Witness Jacky Adock
5. Statement of Defence Witness Sam Lim-Young

2019 Mock Trial Grand Final – Magistrate Script

LEGAL NOTES

CRIMES ACT 1900 - SECTION 52A (3)(c)

Dangerous driving occasioning grievous bodily harm

A person is guilty of the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

ROAD TRANSPORT ACT - SECTION 117(1)(b)

A person must not drive a motor vehicle on a road negligently.

Maximum penalty:

- (b) if the driving occasions grievous bodily harm-20 penalty units or imprisonment for 9 months or both.

This is a criminal case in which the prosecution alleges that the defendant, Jacky Adock, drove a motor vehicle bearing plates PLD-53F which had an impact that caused grievous bodily harm to the alleged victim, Vic Lim-Young. The prosecution allege that Jacky Adock was driving in a manner dangerous prior to the collision.

The prosecution alleges in the alternative, that Jacky Adock was driving negligently at the time of the collision that caused grievous bodily harm to the victim Vic Lim-Young. The charge of negligent driving is laid in the alternative that means that if the court is not satisfied that Jacky Adock drove in a manner dangerous, the court may find that the driving was negligent.

The court cannot convict Jacky Adock of both charges. The prosecution must prove its case beyond reasonable doubt.

For the purposes of the proceedings it is to be assumed that the Court permits Dr J. O'Neil's report to be tendered as evidence of its contents.

2019 Mock Trial Grand Final – Magistrate Script

CASES

HAOUI V R (2008) 188 A CRIM R 331 AT [137], [160]

Section 4(1) Crimes Act defines “grievous bodily harm” to include any permanent or serious disfiguring of the person. At common law, the words “grievous bodily harm” are given their ordinary and natural meaning. “Bodily harm” needs no explanation and “grievous” simply means “really serious”

KING V THE QUEEN (2012) 245 CLR 588 AT [38]

“Dangerous” does not require proof of some species of criminal negligence. Whether or not that manner of driving was “dangerous” will depend upon all the circumstances in which it took place. This includes such factors as the time of day, the nature of the road surface, the weather conditions, and the general area in which the vehicle is being driven.

For example, driving a motor vehicle with no effective brakes is an example of dangerous conduct in the use of a motor vehicle, regardless of where and in what circumstances it is being driven. This is because the ability to bring a vehicle suddenly to a stop is essential to the proper management of a motor vehicle.

The manner of driving will be dangerous if the Crown establishes beyond reasonable doubt that there has been a serious breach of the proper management and control of a motor vehicle and that the breach is so serious that it creates a real danger to another person or persons in the vicinity.

R V BUTTSWORTH (1983) 1 NSWLR 658 AT [677]

In order for a person to be convicted of driving negligently, the prosecution must prove that “*the driving departed from the standard of care to be expected of the ordinary reasonable man in the circumstances*”

2019 Mock Trial Grand Final – Magistrate Script

COURT ATTENDENCE NOTICE

You are required to attend Cooma Local Court on Thursday, 28th November 2019.

Defendant's Details

Name: Jacky Adock
Date of Birth: 11 April 1990
Address: Cooma NSW

Prosecutor

OIC (Prosecutor) Senior Constable MACKAY
CAN Created by: Senior Constable MACKAY
Apprehended by: Senior Constable MACKAY

Details of Offence

CRIMES ACT 1900 – SECTION 52A(3)(C)

That Jacky Adock on 16 September 2019 at Cooma in the State of New South Wales did drive a vehicle, to wit, PLD-53F, when it was involved in an impact occasioning grievous bodily harm to Vic Lim-Young, and at the time of impact the said Jacky Adock was driving the vehicle in a manner dangerous to another person.

ROAD TRANSPORT ACT 2013 – SECTION 117(1)(B)

That Jacky Adock on 16 September 2019 at Cooma in the State of New South Wales did drive a vehicle, to wit, PLD-53F, when it was involved in an impact occasioning grievous bodily harm to Vic Lim-Young, and at the time of impact the said Jacky Adock was driving the vehicle negligently.

2019 Mock Trial Grand Final – Magistrate Script

MEDICAL REPORT

I certify that I examined Vic Lim-Young, who was admitted to the Emergency Department at Cooma Hospital on 16 September 2019.

I examined Vic at approximately 5am on 16 September 2019 and made the following observations:

- Compound fracture to left femur with bone displaced
- Simple non displaced fractures to 3rd and 4th ribs on left side
- Abrasions to left arm
- Abrasions to left side of face/ head
- Treated for possible concussion

The displaced fracture required surgery and fitment of titanium pins and plates to secure the bone.

Abrasions were cleaned and dressed. Patient to expect bruising and discomfort for some time.

Ms/Mr Lim-Young was released on 17 September. Crutches /wheelchair required. Recovery is likely to take months and there is likely to be some ongoing discomfort and scarring.

Dr J. O’Neil
Medical Officer
Cooma Hospital

2019 Mock Trial Grand Final – Magistrate Script

STATEMENT OF PROSECUTION VIC LIM-YOUNG

1. My name is Vic Lim-Young, I am 30 years of age I live in Perth, Western Australia. I moved there from Cooma a few years ago.
2. I have known Jacky Adock for about two years. He/she was dating my brother/sister Sam Lim-Young, but they are no longer together which I am glad of.
3. Sam and Jacky were living together in Cooma. I used to come and visit them from Perth sometimes and we would go out together and party in Canberra and I would stay with them in Cooma.
4. For as long as I have known Jacky, he/she has owned a Nissan Skyline. I don't know anything about cars because they don't interest me, but I know that it is loud, and I don't like it. Jacky is always spending lots of money for his/her mechanic to fix or improve it.
5. On Saturday 15 September I flew from Perth to Canberra and caught up with some friends in Canberra. On that night I met up with Jacky and Sam in the city. We had planned a big night in the city, and I was excited to see Sam. Jacky was always the designated driver. I thought that was kind of lame, but it meant I got a free ride home.
6. We stayed in the city until about 1am. I was still wanting to party, but Sam and Jacky said they were tired and wanted to go home. Jacky said that he/she had to work the next day and didn't want to get home too late. I had been drinking alcohol since around 2pm in the afternoon and I was quite intoxicated, however my memory is still perfect.
7. On the drive home I sat in the back seat on the passenger side. Jacky was driving and Sam was in the front passenger seat. Jacky was driving very aggressively. He/she was speeding and swerving and changing lanes all the time. He/she was driving very close to other cars when he/she was changing lanes and tailgating some cars.
8. The car is very loud and low on the ground and it felt like we were going too fast. I told Jacky to slow down a few times because I was feeling sick. I did doze off a few times on the way home, but I think I was awake most of the trip home.
9. I remember driving down Monaro Highway. I woke up and noticed that it had been raining recently. Jacky was driving very fast when suddenly, the car swerved around a car that was driving in the right lane. Jacky was yelling about the other driver being in the wrong lane. I thought it was dangerous and I was worried.
10. A few moments later Jacky swerved again, and I saw a truck in front of us. I think the truck had not seen us because we had come up quickly and I don't think Jacky used his/her blinker. We hit the truck and the car started sliding. I could hear the tyres screeching and Sam was screaming.
11. I remember the car colliding with something hard and I think I hit my head on something and passed out because the next thing I remember was being in an ambulance.



2019 Mock Trial Grand Final – Magistrate Script

12. The doctors at the hospital told me that I had badly fractured my left leg. I underwent surgery to fix the fracture and it still causes me pain today. I had broken ribs and other scratches and bruises that took time to heal on their own.
13. I believe that Jacky was driving dangerously and that is why we crashed.

2019 Mock Trial Grand Final – Magistrate Script

STATEMENT OF PROSECUTION SENIOR CONSTABLE MACKAY

1. My name is Senior Constable Mackay, I am a police officer attached to the NSW Highway Patrol. I have been a Highway Patrol officer for 17 years.
2. On 16 September 2019 at approximately 3am I received a radio broadcast that there had been a single vehicle collision on the Monaro Highway heading southbound.
3. The Monaro Highway which heads into Cooma is well known because it can be very dangerous when road rules are ignored.
4. Upon arriving at the scene, I noticed a red Nissen Skyline on the southbound side of the road. The vehicle was in the centre of the road with the front of the vehicle facing the guard rail on the left of the roadway. The vehicle was almost perpendicular to the direction of travel.
5. There were no other vehicles around apart from the two cars that had stopped to offer assistance.
6. I noticed significant damage to the nearside of the vehicle consistent with the vehicle having impacted with the guard rail. The damage appeared to be worse at the rear door and rear quarter panel of the vehicle. The rear wheel was damaged and buckled from the impact.
7. I noticed that the road surface was slightly damp. There were some faint tyre marks leading from the median strip lane across to the guard rail.
8. Two of the occupants of the vehicle were identified as Jacky Adock, the driver and Sam Lim-Young, the front passenger. Adock and Lim-Young had alighted from the vehicle and were receiving treatment for cuts and abrasions. The third occupant of the vehicle Vic Lim-Young was being treated by paramedics inside the vehicle.
9. I conducted a brief inspection of the vehicle and observed the rear passenger door was badly damaged and pushed in along with the rear passenger quarter panel. The door could not be opened, and the window had smashed.
10. The tyres of the vehicle had legal tread depth and were not damaged or punctured, aside from the rear left tyre that appeared to be damaged from impact, and I noticed the vehicle had been modified with lowered suspension and larger tyres. Its headlights and windscreen wipers were operational.
11. I approached Jacky Adock and I said, "Hi Jacky, I am Senior Constable Mackay from Cooma Police Station, you don't have to say anything if you don't want to, but anything you say may be recorded and used as evidence against you, do you understand that?" He/she said "Yep". I said, "Can you tell me what happened tonight please?"

2019 Mock Trial Grand Final – Magistrate Script

12. He/she said “I was driving down the Monaro Highway. I wasn’t going that fast, but this other car cut me off and clipped the front of the car. I swerved to avoid him/her, but I lost control and ended up in the guard rail. My neck is really sore and I’m devvo’d about my car”
13. I said “the car is the least of your worries. Your passenger is seriously injured, and you are being charged for dangerous driving”. He/she said, “But I wasn’t driving dangerously!” It was the other person’s fault!”
14. The Monaro Highway is a hot spot for road traffic accidents. I think that the vehicle was being driven at excess speed based on the damage to the car and the fact it was modified to go faster than standard.

2019 Mock Trial Grand Final – Magistrate Script

STATEMENT OF DEFENCE JACKY ADOCK

1. My name is Jacky Adock, I am 27 years of age and I live in Cooma NSW and have done for many years.
2. I was in a relationship with Sam Lim-Young until very recently. After the accident he/she broke up with me. I believe this had something to do with her/his sister/brother Vic Lim-Young.
3. I drove up and down the Monaro Highway at least ten times every week as I used to travel to Queanbeyan every day to go to work. This is about an hour drive from Cooma without traffic.
4. I used to own a 2010 Nissen Skyline. It was my pride and joy and I spent lots of money modifying and maintaining the car. My mechanic had modified the suspension to make it turn corners better and had changed the exhaust to make it go faster. I took it to a race track a few times for some practice and I also got some one-on-one driving training from a professional race driver.
5. On 15 September Sam's brother/sister Vic came to Canberra to visit. We never really got along very well. We went out in Canberra because Sam wanted to catch up with Vic. I don't drink so I was the designated driver.
6. We left the city about 1:30am. I was a bit tired because it was so late, but I felt fine to drive. Vic wanted to keep partying, but Sam and I were ready to go home. Sam and I had planned the next morning to do something together and we didn't want to get home too late.
7. We left the city and headed back to Cooma. I was driving quickly but not that fast. I was probably going a bit over the speed limit on the way home because there were very few cars on the road, and I wanted to get home. I was driving pretty much the way I normally do. I sped up a few times for a bit of fun when the road was clear.
8. Vic was drunk and kept complaining about my car being too uncomfortable and too loud. He/she kept saying how it was a stupid car and that he/she hated being in it. He/she kept saying I was driving too fast.
9. Vic was annoying me, but I kept driving the way I normally do. When we reached the Rose Valley Road heading towards Cooma, I was in the right-hand lane cruising along at about 100km/h, possibly a little bit more. I know the road is an 80 zone there, but I felt comfortable in the conditions driving at that speed. There had been some light rain, but the road was still mainly dry.
10. As we came down the hill there was a car in the right-hand lane doing less than 80km/h. I flashed my headlights to get them to move out of my way, but they didn't, so I overtook them on the left and went

2019 Mock Trial Grand Final – Magistrate Script

back into the right lane. I was annoyed that they were hogging the right lane, so I didn't give the other driver much room.

11. A little further down the hill there was a small truck also in the right lane. Trucks are not allowed in the right lane because it is dangerous. I was travelling at about 110km/h down the hill. As I got close to the back of truck, I moved to the centre lane to pass the truck. I don't know whether I indicated or not.
12. Suddenly the truck changed lanes into the centre lane. I beeped the horn and moved to the left, but the truck kept going and nudged the front of my car. I slammed on the brakes and swerved to stop the truck from hitting my car. As I did that the rear of the car started sliding in a drifting motion. It all happened so fast and I tried to steer the car out of the slide.
13. Before I could control it, the car slid into the guard rail on the left side and bounced off. I don't believe I was driving dangerously as I have driven this road many times before and I know the conditions.

2019 Mock Trial Grand Final – Magistrate Script

STATEMENT OF DEFENCE SAM LIM-YOUNG

1. My name is Sam Lim-Young, I am 22 years of age and I live in Perth, Western Australia. I moved to Perth to be close to my sister/brother Vic Lim-Young after the accident. Vic needed ongoing care because of the injuries.
2. I was in a relationship with Jacky Adock for a couple of years. We broke up after the accident because he/she became really depressed. I tried to help him/her, but he/she pushed me and Vic away. It was hard to see Jacky like that.
3. Jacky used to have a Nissen Skyline. He/she loved that car and spent almost all his/her wages on doing it up. He/she had modified it to make it louder and faster.
4. Jacky did sometimes drive too fast, but I always felt like he/she was in control. I didn't ever feel too worried because I knew that Jacky had been given some driver training.
5. On the weekend of 15 September Vic came to Cooma to visit me. There has always been some tension between Jacky and Vic but I'm not quite sure why. They never seemed to get along. We went out to the city on the Saturday night and went to some nightclubs. Vic and I were drinking, and Jacky was 'deso driver', meaning that he/she didn't drink anything.
6. By 1.30am I was getting tired and I told Jacky that I wanted to go home. Jacky was getting tired too. Vic wanted to stay out, but Jacky and I had to get up early, so we left so we left.
7. It is a long drive back to Cooma but there were virtually no cars on the road, so it went by quickly. I think Jacky was driving above the speed limit, but it seemed safe because there were no other cars around and it was late at night. I was in the front passenger seat and Vic was sitting behind me.
8. There were times that Jacky was driving a bit too fast, but it was only when there were no cars on the road and the coast was clear. He might have tailgated one car because it was driving slowly on the highway. I don't really remember because I was quite tipsy.
9. Vic was drunk and kept complaining about Jacky's car. I think Vic was trying to stir Jacky up. I told her/him to stop because it was rude, but Vic kept going. I could tell it was annoying Jacky because she/he started driving more aggressively which then fired Vic up even more.
10. As we came down the hill I mentioned to Jacky and she/he did slow down a bit as it had been raining. I remember Jacky beeped his horn as we approached a car driving slowly, but it didn't move.
11. I put my hand on Jacky's leg and said, "It's okay, take it easy". Jacky swerved around the car and kept going. Vic started yelling something from the back seat and I told her/him to shut up.

2019 Mock Trial Grand Final – Magistrate Script

12. A little further on we got close to the back of a truck that Jacky wanted to overtake. Suddenly the truck changed lanes into the centre lane and cut us off. He obviously didn't look at his mirrors. Jacky slammed on the brakes and swerved to the left. The truck kept going and hit the front of Jacky's car.
13. Before I could register what was happening, our car started sliding and Jacky was trying to control it with the steering. We were sliding towards the barrier and I was screaming out to Jacky to stop.
14. The car hit the barrier and I hit my head and got some whiplash and Vic was semi-conscious in the back seat. I got my phone out and called '000'.
15. I don't believe that Jacky was driving dangerously. He/she might have been travelling over the speed limit, but she/he has experience driving on that particular road and she/he is a good driver. I believe it was the truck driver's fault for cutting us off.