

Kelly Cup 2025: Mock Trial Scenario

Rex v. Jarvis¹

¹ This case has been adapted by the Durham Region Public Legal Education Committee (PLEC) from an OJEN case: *R. v. Jones*. PLEC thanks OJEN for allowing it to use this case.

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Overview of the Case²

On Friday September 6th, 2024, at around 7:00 p.m., two friends, Kylie Jarvis and Noah Tremblay, went shopping for school supplies at the Oshawa Centre. They stopped at Starbucks to get drinks and then headed over to Staples. Due to the Back to School sale, the store was packed.

As they went up and down the aisles, Kylie accidentally dropped her backpack. She picked it up and stuffed some of the items back in the backpack and some in her pocket. She thought she had everything when she heard Noah call her name. She looked around but could not see him. She then noticed one last item on the floor. It was the Apple adaptor she had taken from the shelf just before she dropped her backpack. She hastily stuffed it into her pocket and went to find Noah. Noah saw the backpack fall but was too far away to help.

When they had finished their shopping, they waited in line to pay for almost 20 minutes. When they got to cash, Noah paid for his items and went to wait outside. Kylie paid for her items, but not the Apple adapter which was still in her pocket. As she left, a store security guard named Frank Lorenzo stopped her. Kylie panicked, struggled, and tried to get away. The security guard firmly grabbed Kylie's arm and then instructed both Kylie and Noah to come to the security office.

Once they were in the office, Frank Lorenzo asked Kylie to empty her pockets which she did, placing her cell phone and the Apple adapter onto the desk. Kylie tried to explain that she didn't mean to take the adapter. Frank Lorenzo said he didn't believe her and called the police.

A few minutes later, PC Tran from the Durham Region Police Service arrived. Frank Lorenzo described what he had observed. Kylie explained that she had simply forgotten to pay for the adapter. Kylie started to cry and was apologizing. Noah tried to help by saying he didn't think that Kylie meant to take the adapter. However, the officer told Noah to leave.

PC Tran asked Kylie a couple of questions. At approximately 8:15, the officer charged her with theft under \$5,000 contrary to section 322(1)(a) of the *Criminal Code of Canada*. The officer then read Kylie her right to counsel and cautions. Afterwards, Kylie was released with a Notice to Appear in court on October 8th, 2024. Kylie was then allowed to leave the store, around 8:30 pm.

² For ease of comprehension, each role has been assigned a gender for the Overview. However, students can choose to play the role using any gender and all witnesses have been given names that can be adapted.

The Information

Information / Dénonciation
Form 2, sections 506, 508.1 and 788 / Formule 2, articles 506, 508.1 et 788

IPV (Intimate Partner Violence / Violence contre un partenaire intime) 998 24 Y28110234500
 S (Impaired driving with substances / Conduite avec capacités affaiblies par des substances) Information Number / N° de la dénonciation
 V (Vessel / Bateau) Replacement Information / Dénonciation de remplacement

<input type="checkbox"/> Non-Disclosure Order Pursuant to s. 486.31 <i>Ordonnance de non-divulgateion, art. 486.31</i>	<input type="checkbox"/> Publication ban pursuant to _____ <i>Interdiction de publication en vertu de _____</i>
<input type="checkbox"/> Non-communication s. 515(12)/516(2) <i>Non-communication, par. 515(12)/516(2)</i>	<input type="checkbox"/> Provisions of 530(3) complied with _____ <i>Dispositions du par. 530 (3) observées</i>
<input type="checkbox"/> Notice to parent filed <i>Avis au père ou à la mère déposé</i>	<input type="checkbox"/> Charges Read to Young Person _____ <i>Accusations lues à l'adolescent</i> <input type="checkbox"/> Age Confirmed _____ <i>Âge confirmé</i>

Arrest Date: 041024 15 month Flag: 040126 18 month Flag: 050426
 Date d'arrestation Alerte à 15 mois Alerte à 18 mois

Sworn/Affirmed Date /
 Deemed Sworn/Affirmed Date: 171024 15 month Flag: 170126 18 month Flag: 180426
Déclarée sous serment/affirmée solennellement le / réputée être déclarée sous serment/affirmée solennellement le Alerte à 15 mois Alerte à 18 mois

YOUTH JUSTICE COURT
 TRIBUNAL POUR ADOLESCENTS
 CANADA
 PROVINCE OF ONTARIO
 PROVINCE DE L'ONTARIO
Central East / Centre-Est
(Region / Région)

Information of: Sally White
 Dénonciation de :
 of REGION OF DURHAM
 de Peace Officer
(occupation / profession)

hereinafter called the informant. / ci-après appelé(e) le dénonciateur.
 The informant says that they believe on reasonable grounds that
 Le dénonciateur déclare qu'il a des motifs raisonnables de croire que

JORDAN, Kyle/Kylie DOB: June 13, 2008
1235 Boxwood Dr, Oshawa, ON

a young person within the meaning of the *Youth Criminal Justice Act*,
 un adolescent au sens de la Loi sur le système de justice pénale pour les adolescents

COUNT 1

On or about the 6th day of September in the year 2024 at the City of Oshawa in the Central East Region did, fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it, contrary to Section 322 (1)(a) of the Criminal Code of Canada.

-----End of Charges/Counts-----

Information No. / N° de la dénonciation
988 24 Y28110234500

Return Date / Date à laquelle le document est rapporté
20

INFORMATION Against / DÉNONCIATION visant
JORDAN, Kyle/Kylie

Address / Adresse
1235 Boxwood Dr, Oshawa, ON
L1H 9G6

CHARGE / ACCUSATION

Charge 1 of 1
Theft under \$5000

Refer to front page for further counts. / Reportez-vous à la première page pour plus de chefs.

FOR ADMINISTRATIVE PURPOSES ONLY
À DES FINS ADMINISTRATIVES SEULEMENT

Summons / Sommation Show Cause / Audience de justification Warrant 1st / Mandat en 1^{re} instance

Replacement Information / Dénonciation de remplacement

Reportable MV. / Véhicule V.A. à déclarer / Code de la route 1998

CV.O.R. No (Commercial Vehicles Only) / Numéro C.J.U.V.U. (véhicules utilitaires seulement)

Sex / Sexe: M / F

BIRTH Date / Date de naissance: Day / Jour: 13, Month / Mois: 06, Year / Année: 2008

Was defendant owner? / La partie défenderesse était-elle propriétaire? Yes / Oui No / Non

Driver's License Number / Numéro du permis de conduire

Plate No. / Numéro de plaque Involves a Collision / Infraction reliée à un accident

Informant / Dénonciateur

Date Sworn/Affirmed / Déclaré sous serment/affirmé: Date of Arrest / Date de l'arrestation

Deemed to be sworn/affirmed / Réputée être déclarée sous serment/affirmé solennellement le

Officer / Agent de police: No. / N°

Police Agency / Service de police: Div. / Dist.

Occurrence Number / N° d'incident

Courtroom / Salle d'audience

Alt / A(Au)

Information No. / N° de la dénonciation

Return Date / Date à laquelle le document est rapporté
20

INFORMATION Against / DÉNONCIATION visant

Address / Adresse

CHARGE / ACCUSATION

Charge 1 of

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Alt / A(Au)

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20

INFORMATION Against / DÉNONCIATION visant

Address / Adresse

CHARGE / ACCUSATION

Charge 1 of

Refer to front page for further counts. / Reportez-vous à la première page pour plus de chefs.

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Driver's License Number / Numéro du permis de conduire

Plate No. / Numéro de plaque Involves a Collision / Infraction reliée à un accident

Informant / Dénonciateur

Date Sworn/Affirmed / Déclaré sous serment/affirmé: Date of Arrest / Date de l'arrestation

Deemed to be sworn/affirmed / Réputée être déclarée sous serment/affirmé solennellement le

Officer / Agent de police: No. / N°

Police Agency / Service de police: Div. / Dist.

Occurrence Number / N° d'incident

Courtroom / Salle d'audience

Alt / A(Au)

Relevant Law & Legal Principles

Youth Criminal Justice Act

The *Youth Criminal Justice Act (YCJA)* is the legislation that governs how young people (aged 12-17 inclusive) are processed and sentenced in the criminal justice system. The *YCJA* came into effect in 2002 and contains both a Preamble and a Declaration of Principles **which offer guidance on how to interpret the YCJA.**

The Declaration provides that:

The objectives of the youth justice system are to prevent crime; rehabilitate and reintegrate young persons into society; and ensure meaningful consequences for offences. In these ways, the system can contribute to the long-term protection of society.

- The youth justice system must reflect the fact that young persons lack the maturity of adults. The youth system is different from the adult system in many respects, including: measures of accountability are consistent with young persons' reduced level of maturity; procedural protections are enhanced; rehabilitation and reintegration are given special emphasis; and the importance of timely intervention is recognized.
- Young persons are to be held accountable through interventions that are fair and in proportion to the seriousness of the offence.
- Within the limits of fair and proportionate accountability, interventions should reinforce respect for societal values, encourage the repair of harm done, be meaningful to the young person, respect gender, ethnic, cultural and linguistic differences and respond to the needs of Aboriginal young persons and of young persons with special requirements.
- Youth justice proceedings require special guarantees to protect the rights of young people; courtesy, compassion and respect for victims; the opportunity for victims to be informed and to participate; and that parents be informed and encouraged to participate in addressing the young person's offending behaviour.

The *YCJA* also has specific mechanisms which allow young people charged with a criminal offence to resolve their case outside of the formal court process. In fact, only a small percentage of cases in the criminal justice system are resolved by way of a trial.

Under the *YCJA*, it is very unlikely that a theft under \$5,000 case would go to trial. In reality, the case would likely be resolved through an extra judicial measure such as a letter of apology to Staples, or taking an anti-shoplifting course followed by a withdrawal of the criminal charge.

Even if there was a trial in this type of case, it is very unlikely that an accused person with no prior record would ever be sentenced to jail. The sentencing principles under the *YCJA* focus

on meaningful consequences that focus on rehabilitation and the reintegration of youth into society. Custody is reserved primarily for violent offenders and serious repeat offenders.

Despite the fact that this case would not likely go to trial, a mock trial is designed to allow students to experience the elements of the criminal trial process, such as the opportunity to advocate in an adversarial forum. Students also develop their written and oral advocacy skills and enhance their understanding of the justice system.

Criminal Trial Principles

1. The Presumption of Innocence & the Burden of Proof

Everyone who is accused of a crime is considered innocent until proven guilty. This means it is the Crown's responsibility to prove beyond a reasonable doubt that the accused is guilty. This sets a high standard for the Crown to meet. If the charges against a person are not proven beyond a reasonable doubt, then the person is found not guilty. It is *not* the accused person's responsibility to prove their innocence.

2. The Adversarial System

The 'debate' that takes place during a trial is called the "adversarial" approach. It involves two opposing sides arguing against one another. Each side is responsible for presenting evidence favourable to their position to an impartial decision-maker (the judge or jury), who is tasked with deciding the case. The decision-maker is a neutral party who relies on the evidence and arguments presented in court.

In a criminal case, the opposing sides are the Crown and the Defence. They are responsible for putting the best evidence forward and making the strongest argument possible. The judge cannot investigate or argue either side, do any research, or call additional witnesses. Instead, the judge relies on the lawyers to present the case.

3. Criminal Liability

Generally speaking, for a person to be found guilty of a criminal offence they must have committed the illegal act (*actus reus*) and have the required "state of mind" (*mens rea*). The Crown must prove both elements of the offence beyond a reasonable doubt.

The defence will try to raise a reasonable doubt about either or both of these elements, or establish that the accused's behaviour was justified, such as in a self-defence case.

Theft Under \$5000

Criminal Code of Canada

322. (1) Theft – Everyone commits theft who fraudulently and without colour of right takes, or fraudulently and without of colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent,

- (a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
- (b) to pledge it or deposit it as security;
- (c) to part with it under a condition with respect to its return that the person who parts with it may be unable to perform;
- (d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

The *actus reus* for theft under \$5000, is the unauthorized taking of property valued under \$5000. The Crown will need to prove beyond a reasonable doubt that the accused took the item and that the accused intended to take it. So, the Crown will need to prove that:

:

- The accused took something that belonged to someone else;
- The accused took the property fraudulently and without colour of right;
- When the accused took the property, the accused meant to deprive the owner, at least temporarily, of the property;
- The property was worth less than \$5000.

If the Crown cannot prove beyond a reasonable doubt that the accused intended to take the item, then the court must find the accused not guilty.

When a person is charged with certain crimes, including theft under \$5000, the Crown can choose to pursue it as a summary conviction offence or an indictable offence. Summary offences are considered minor offences with a maximum sentence of a \$5000 fine, or a term of imprisonment for two years less a day, or both. Indictable offences carry higher penalties.

It is very unlikely that the Crown would choose to pursue a case of theft under \$5000 as an indictable offence, particularly in the case of a young person. **For the purposes of this mock trial, assume that the Crown has elected to proceed by means of summary conviction.**

Notes

- The Crown has elected to proceed by means of summary conviction.
- The Defence has agreed that there are no *Charter* arguments to raise.
- The Apple adapter should be entered as an exhibit through PC Tran.

DRAFT



Kyle/Kylie Jarvis, Accused

How can I prepare to be a good witness during trial?

- Learn your facts by heart.
- You will be sworn in during the trial and need to spell your character's full name.
- Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- Listen to the questions carefully. If you do not understand the question, ask to have it repeated or ask for clarification.
- If a lawyer asks a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time.
- Get into character when you testify.

Your background:

- Your name is Kyle/Kylie Jarvis
- You are 16 years old
- You are in grade 11
- You have no previous criminal record

Your version of what happened:

- On, September 6th, 2024 you decided to go shopping with your friend, Noah Tremblay, at the Oshawa Centre to buy school supplies.
- You arrived at the mall around 7 p.m. and went to Starbucks to get drinks. You then went to Staples.
- The Staples store was really busy. At one point, you dropped your backpack and all the things you were carrying in your hands. You felt embarrassed and tried to pick up your stuff as quickly as you could.
- As you were picking everything up, you thought you heard Noah calling you – you looked around but couldn't see him.
- Then you spotted the Apple adapter you had taken off the shelf; you grabbed it off the floor and put it in your pocket.
- The line up for the cashiers was huge. You waited in line for about 20 minutes before you and Noah were able to pay.
- You were feeling tired and hungry and had completely forgotten about the adapter until a security guard grabbed you as you were exiting the store.
- You were so scared when it happened that you could hardly talk. Your first reaction was to try to get away because you knew you were going to get into trouble, and you didn't mean to do anything wrong.
- You went with the security guard to the security office and gave her the adaptor. You tried to explain that you didn't mean to take it and that you had just forgotten to pay for it.
- She said she didn't believe you and called the police.

- PC Tran arrived. You tried to explain that you had just forgotten to pay for the adapter. You started to cry because you were so upset and didn't want to get into trouble. You even tried to apologize.
- Noah tried to tell PC Tran that he didn't think you meant to steal the phone adapter but was told to leave.
- PC Tran asked a few questions and then charged you with theft under \$5000.
- You were served with a Notice to Appear and told you could leave.
- You left the mall around 8:30 pm.

Questions you should think about when preparing:

- What kind of student are you? Have you ever broken the rules before?
- Do you have friends who shoplift?
- What is your family like and how will they feel about you being charged?
- How do you feel about being charged?
- How were you acting in the store before this happened?
- Why did you try to escape?
- Why did you take the adapter off the shelf when you didn't have enough money to pay for it?
- Was there anything going on in the store that day that may have made you forget that the adapter was in your pocket?
- How did you act when you were questioned by the police officer?
- Did you apologize?

Noah/Noa Tremblay, Friend of Accused (Defence Witness)

Your background:

- Your name is Noah/Noa Tremblay
- You are 16 years old
- You are in grade 11
- You have no previous criminal record and you have known Kyle/Kylie Jarvis since grade 1

Your version of what happened:

- On September 6th, 2024, you decided to go shopping for school supplies with your friend, Kylie Jarvis at the Oshawa Centre.
- You arrived at the mall around 7 p.m. and got drinks from Starbucks before going to the Staples store.
- You knew one of the things Kylie wanted to get was an Apple adapter.
- The store was really packed and the line up for the cashiers was huge. You waited in line for about 20 minutes before you and Kylie were able to pay for your items.
- Kylie was feeling really tired and hungry. Your plan was to leave the store and get something to eat.
- The security guard stopped Kylie as you guys were exiting the store. You were as surprised as Kylie was. You had no idea what was going on.
- Kylie looked panicked and surprised. She tried to get away, but the security guard stopped her.
- You went with Kylie and the security guard to the security office.
- Kylie was asked to empty her pockets. She handed over a brand new Apple phone adapter, still in its box.
- She looked shocked and confused and tried to explain how she had just forgotten to pay for it.
- The security guard didn't believe Kylie and called the police.
- PC Tran arrived. Kylie tried to explain that she had forgotten the adapter in her pocket. She was crying and upset and apologizing.
- You tried to help Kylie by telling PC Tran that you didn't think Kylie meant to steal the adapter
- PC Tran explained that Kylie was going to be charged and told you to leave.

How can I prepare to be a good witness during trial?

- Learn your facts by heart.
- You will be sworn in during the trial and need to spell your character's full name.
- Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- If a lawyer asks a question about something that isn't in your fact scenario, you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time.
- Get into character when you testifying.

Questions you should think about when preparing:

- What kind of student are you?
- Have you ever broken the rules before?
- Do you have friends who shoplift?
- How do you feel about shoplifting?
- How were you acting in the store before this happened?
- Did you and Kylie talk about buying or stealing the adapter?
- Was there anything going on in the store that day that might have made Kylie forget that he/she put the adapter in her pocket?
- How did you act when you met the security guard and Constable Tran?

Fran/Frank Lorenzo, Store Security Guard (Crown Witness)

Your background:

- You are 35 years old.
- You have worked as a security guard for Staples at the Oshawa Centre for 5 years.
- You take your job very seriously and believe that shoplifting costs the store thousands of dollars every year
- You like young people, but cannot understand why they keep getting into trouble by shoplifting, starting fights, and sometimes dealing drugs at the mall.

Your version of what happened:

- On September 6, 2024 you were working at Staples at the Oshawa Centre. You noticed Kylie and Noah because they were laughing and fooling around as they shopped.
- You saw the accused, Kylie Jarvis take an Apple adapter from the display shelf.
- You saw Kylie drop her backpack and the contents spill onto the floor. You noticed that as Kylie was picking up her stuff, she looked around and then put the adapter in her pocket.
- You kept watching the accused and her friend.
- Eventually they waited in line and paid for all items except the Apple adapter.
- As soon as they stepped out of the store, you stopped Kylie for shoplifting. She struggled with you and tried to get away.
- You held onto Kylie's arm so that she couldn't escape.
- You took them both down to the security office.
- When you asked Kylie to empty her pockets, she handed you the adapter and started explaining how she didn't mean to steal it and had forgotten to pay for it.
- You said you didn't believe her and then called the police.
- At around 7:45 p.m., Constable Tran arrived.
- You handed the adapter to the officer and told him what you had seen.
- The accused tried to tell the officer that she had simply forgotten to pay and started apologizing.
- The friend started chiming in, but PC Tran told the friend that he was not being charged and that he should leave.
- PC Tran told Kylie she was being charged with theft under \$5000
- He arrested her, served her with an Appearance Notice and then sent her home.

Questions you should think about when preparing:

- Why did you choose to work security in a mall?
- Do you catch a lot of shoplifters in a month?
- How old are most of these shoplifters?
- What do they most often shoplift?
- How do they react when you stop them?
- Do you always call the police?
- Why did you call the police this time?

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- Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- If a lawyer asks a question about something that isn't in your package you can say you don't know the answer.
- Speak with the lawyers representing your side ahead of time.
- Get into character when you testify.

Constable Justin/Justine Tran, Arresting Officer (Crown Witness)

Your background:

- Your name is Justin/Justine Tran.
- You are 28 years old.
- You work for the Durham Regional Police Service.
- You have been a police officer for 3 years.
- Your patrol area includes the Oshawa Centre.
- You are often called in for shoplifting incidents.

Your version of what happened:

- On September 6th, 2024 you were on patrol in the area of the Oshawa Centre.
- Your shift was 4 pm – 4 am.
- You received a call from a Staples security guard. You arrived at the mall shortly before 8:00 pm.
- In the mall security office, you met the store security guard, Frank Lorenzo, as well as the accused, Kylie Jarvis and her friend, Noah Tremblay.
- You questioned the security guard who told you that she stopped the two young people when they were leaving the store because she believed that they had stolen an Apple adapter.
- The security guard gave you the adapter, which retails for \$24.99.
- Kylie Jarvis started explaining that she had forgotten to take the adapter out of her pocket and pay for it before leaving the store.
- Her friend, Noah Tremblay, was trying to say the same thing.
- You told Noah that you were not charging him and that he should leave.
- You questioned Kylie Jarvis who was very upset and crying. She answered all your questions quickly and was co-operative.
- She did not have enough money to pay for the adapter. All the other items she paid for (highlighters and a binder) cost less than \$10.
- You charged Kylie Jarvis with theft under \$5000, read the rights to counsel and issued a Notice to Appear.
- You let Kylie leave at about 8:30 p.m.
- You put the adapter in a bag and marked it. You took it with you back to the police station and entered it as an Exhibit.
- ***Note: The Apple adapter should be entered as an exhibit during your testimony.***

Questions you should think about when preparing:

- What reason did you have for charging the accused?
- Was it clear that she did not own the adapter?
- Was the security guard able to identify Kylie Jarvis as the one who stole the adapter?
- Why didn't you believe Kylie's explanation that she simply forgot to pay?

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