

Bar Mock Trial Competition 2017/18



CASE 1 (Scotland) HMA v PHILLIPS

Her Majesty's Advocate v Phillips

(Case 1)

Summary of Facts

The accused, Maddison Phillips, is charged with the common law crime of mobbing and rioting. On 8 August **2017**, there were riots in the town of Murrayfield. At around 10 p.m. PCs Wilkinson and Johnson saw one of the rioters, who was wearing a blue jumper, throwing bottles at their police car. The officers chased this person from the scene, but lost sight of him/her as (s)he ran through a local park. Around 5 minutes later, the officers saw the accused running away from the direction of the park and recognised him/her as being the person who had been throwing bottles. (S)he was not wearing a blue jumper at the time that (s)he was stopped, but a blue jumper was found at the exit of the park. That jumper was tested for DNA; the DNA profiles of at least 4 people were found, one of which matched that of Maddison Phillips.

The accused denies having been involved in the rioting. (S)he says that (s)he was walking home from a friend's house when (s)he became aware of a disturbance. (S)he went to see what was happening, but did not take part in the rioting. (S)he ran away from the area because (s)he was scared by what she saw, and says that (s)he was not wearing a blue jumper that evening. (S)he does not know how a jumper with her DNA in it came to be in the park, but assumes it must have been when (s)he had been playing football earlier.

The Law

"Mobbing and rioting" is a common law crime in Scotland. That means it has long been recognised as a crime by Scottish Courts, without the need for Parliament to specifically outlaw it in statute. It is sufficient for a conviction that the accused is a member of a group of persons acting together for a common illegal purpose, which the effect or attempt to effect by violence, intimidation or a demonstration of force, in breach of the public peace.

There is no dispute that the person seen to throw bottles at the policemen would be guilty of mobbing and rioting. The issue in this case is whether the police officers are correct in identifying the accused as being the person who threw the bottles. The two other people who were seen throwing bottles have never been caught.

In cases where identification evidence is a large part of the prosecution case, juries are warned of 'the special need for caution' before convicting on the basis of that evidence. Honest and convincing witnesses can be mistaken – we are all familiar with having been convinced that we saw someone we know when in fact it turns out to be someone else entirely.

Under the 'Turnbull' guidelines (named after the case of R v Turnbull [1977]) the jury would be directed to examine closely the circumstances in which the identification is made. For example the jury is invited to take into account (amongst other things):

"How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way? How long elapsed between the original observation and the subsequent identification to police?"

The defence in this case may wish to challenge the circumstances in which the identification was made in order to cast doubt on the identification.

Indictment

IN THE SHERIFF COURT AT MURRAYFIELD

HER MAJESTY'S ADVOCATE

-v-

MADDISON PHILLIPS

MADDISON PHILLIPS is charged as follows:

STATEMENT OF OFFENCE

On 8th August 2017 at Murrayfield High Street, Murrayfield, you Maddison Phillips formed part of a riotous mob, which, acting with a common purpose, obstructed Police Constables Wilkinson and Johnson, both on duty, and assaulted them by throwing glass bottles at the marked police vehicle in which they were travelling, causing them to fear for their safety.

Notes

All the witness statements that follow are signed by the witness and bear this declaration:

"This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true."

Only the underlined evidence is in dispute, either because (it is suggested) the witness is not telling the truth or because the witness has made an honest mistake as to what s/he saw or heard. There is no dispute as to those parts of the statement that are not underlined.

STATEMENT OF PROSECUTION WITNESSES

Name	PC Wilkinson
Age	Over 18
Occupation	Police Officer
Date	9 th August 2017

I was on duty on 8 August 2017 when at around 10 p.m. my colleague PC Johnson and I received an urgent call to attend Murrayfield High Street. We drove straight there in our police car.

When we arrived, we saw a large group of youths about 20 metres away from where we had parked. There must have been around 30 people there; they were shouting, running backwards and forwards, some people were smashing windows of shops, and cars had been set alight. It was chaos and I was scared for my safety. We stayed in our car because there were no other officers available to help us at that time.

One person really stood out from the group because (s)he started throwing bottles at our car. (S)he was wearing a dark blue sports hoody, with the hood up, and dark tracksuit bottoms. I could not quite make out what brand the hoody was. I didn't notice anything else about their clothing. (S)he was around 5'7" and what I would describe as a little bit plump. I got a really good look at their face, as they stopped for a couple of seconds and looked directly at us. This was the only time I saw the person's face and they were around 15 metres away. It was dark, but the area was well lit with streetlights and the light from the numerous fires. Other police cars arrived, and the crowd immediately dispersed, running off in all different directions.

I saw the person who had been throwing bottles at us running off toward Eden Park and so we chased after him/her in our car. (S)he ran into the park, when we lost him/her because it was dark. We decided to drive round to the other side of the park to see if we could catch him/her when they ran out the other side. (There are only 2 entrances to the park, which is surrounded by a fence). We didn't see him/her at this stage, so we drove around the area. I produce a map of the area as my exhibit JW/1.

Around 5 minutes later, as we drove down Lansdowne Road, I saw the same person who had earlier thrown bottles at us running towards us, before slowing to a walk. I recognised their face. They must have taken off their blue hoody in the park, because at this point, they were not wearing a hoody, but had on a white t-shirt and dark tracksuit bottoms.

As the person walked past the car, I got out and arrested him/her on suspicion of violent disorder and cautioned him/her. (She said 'What are you talking about? I was just going home!' I found out that this person was Maddison Phillips. I then took him/her to the police station.

STATEMENT OF PROSECUTION WITNESS 2

Name	PC Johnson
Age	Over 18
Occupation	Police Officer
Date	9 th August 2017

I was on duty with PC Wilkinson on 8th August 2017 on the night shift. At around 10 p.m. we responded to an urgent call to attend Murrayfield High Street. PC Wilkinson drove us straight there.

When we got there, I can only describe the situation as complete carnage. There was a large group of youths, all shouting, and going back and forth in a menacing way. Some people were smashing shop windows and stealing items from the shops, and others had set fire to cars. There was so much going on, it was hard to take everything in, or know where to look.

As we were sat in our car, I became aware of bottles being thrown in our direction. I looked over to where the bottles were coming from, and saw a boy/girl in their late teens, of average height and build, wearing a dark blue hooded jumper and dark trousers with a bottle in their hand. I caught a glimpse of their face as they threw that bottle at us, but I can't remember them having any distinguishing features. I did not look at him/her for long, as other officers then arrived, and I turned around to look at them.

The crowd then rapidly dispersed, with the youths running off in all different directions. PC Wilkinson drove away from the scene, in pursuit of the person who had been throwing bottles at us. (S)he ran into Eden Park. We thought we could cut them off by driving to the other side, where there is only one exit, but we couldn't see them when we got there. We drove around for a few minutes, when we saw someone running towards us on Lansdowne Road. They then slowed down to a walk. PC Wilkinson said that it was the same person who had been throwing the bottles, and got out of the car to detain the girl/boy. I recognised then that it was the same person who had thrown bottles earlier, but noticed that they were now only wearing a white t-shirt on top.

I left PC Wilkinson to deal with the arrest of the person who I now know is Maddison Phillips. I went back to the park to see if I could find any evidence. As I got to the exit of Eden Park, I saw a blue hooded jumper lying on the floor, near to a bin inside the park, by the exit. I seized it, and exhibit it as MJ/1.

Prosecution Witness 3 (Section 9)

Name	Zara Cassidy
Age	Over 18
Occupation	Forensic Scientist
Date	29 th August 2017

(This statement will be read to the jury, there being nothing challenged in the statement and the defence have no questions to ask of the witness)

I am employed by the Forensic Science Service as a forensic scientist. My area of expertise is DNA obtained from skin cells.

On 29 August **2017** I examined exhibit MJ/1, a blue hooded jumper. I was looking for the presence of any DNA.

I obtained DNA profiles for at least 4 different people. For present purposes, I shall refer to the DNA profiles obtained from MJ/1 as 'profile a', 'profile b', 'profile c' and 'profile d.'

After comparing the DNA of Maddison Phillips with the profiles a-d, I have concluded that it is extremely likely that 'profile a' matches that of Maddison Phillips. The probability of 'profile a' having been deposited by someone other than Maddison Phillips is 1 in 1 billion.

I do not know the identity of the people who deposited profiles b-d.

It is likely that the DNA was deposited on the jumper when the item of clothing was worn or in close proximity to each of the 4 individuals. I am unable to say when the jumper had been worn by any of those 4 individuals.

It is also perfectly possible for other people to have worn or been in close proximity to the jumper without leaving enough DNA to establish a profile. As such, I am unable to say that only 4 people would ever have worn the jumper.

STATEMENT OF DEFENCE WITNESS 1 – THE ACCUSED

Name	Maddison Phillips
Age	18
Occupation	Student
Date	9 th August 2017

On the evening of 8th August 2017, I had been to my friend Sam Armitage's house on Church Road. We had been playing computer games. I left to go home at around 9.50pm, as my mum had told me that I needed to be home by 10 p.m.

My route home from Sam's house takes me across Murrayfield High Street. As I approached the High Street, I heard a disturbance taking place. I knew that there were riots taking place in other towns, as I had seen the news earlier in the evening, but I did not think that there would be trouble in Murrayfield.

Stupidly, I let curiosity get the better of me, and I walked a little way down the High Street, so that I could see what was going on. I did not go more than about 10 metres down the road towards the trouble and did not get within 30 metres of where the group of rioters were, outside Franklin Gardens Shopping Parade. I saw a police car arrive and park up, but I did not see any officers get out of the car. The car was parked on the other side of the group of rioters to me.

I was scared by what I saw, and so immediately ran away towards my house, which is two streets away from Landsdowne Road. I did not go through the park. I did not take part in any of the trouble, and I certainly did not throw any bottles at the police.

I ran as far as Landsdowne Road before I felt safe enough to slow to a walk. As I did so, two police officers got out of a police car, and one of them said that I was under arrest for violent disorder. I said 'What are you talking about, I was just going home' because that is the truth.

At no stage that evening was I wearing a blue hoody. It was a hot day, and I had been wearing only my white t-shirt all evening. I don't even own a blue hoody; I was playing football at the park that day and a blue jumper was used as a goal post, I remember picking it up to move it and I had to dive around lot to save the ball.

All I do know is that it I wasn't involved in the riots and the hoody doesn't belong to me.

STATEMENT OF DEFENCE WITNESS 2

Name	Sam Armitage
Age	18
Occupation	Student
Date	30 th September 2017

I am Maddison Phillips's best friend. We have known each other for years, and are more like siblings.

A couple of days ago, I found out that Maddison had been charged for violent disorder. (S)he told me that (s)he had been accused of taking part in the August riots, and that the police were saying (s)he was throwing bottles at them.

My memory of the day of the riots is pretty hazy. I remember the facts of the riots well because it made the news and everyone was talking about it. I remember that Maddison had been to my house that evening to see me, I think (s)he left shortly before 10 p.m. but I can't really remember those kinds of details now. I do remember that (s)he definitely was not wearing a blue hoody. It was hot that day, so there is no way (s)he would have been wearing something so warm. (S)He was wearing a white t-shirt, and navy jogging bottoms like (s)he usually does.

I can confirm that me and my friends are always borrowing clothes from one another, and we do use our clothes as markers if we are playing games in the park.

I don't believe for a moment that (s)he would have been involved in any trouble. I would not lie to get my friend out of trouble.