

## Bar Mock Trial Competition 2017/18



### CASE 2 (Scotland) HMA v TILLMOUTH

# Her Majesty's Advocate v Tillmouth

## (Case 2)

### Summary of Facts

Effie Tillmouth, the Accused, is charged with possession of a quantity of cannabis resin, found in a shoe box in his/her home. The shoe box had a hand written label on it which described it as 'my old CDs' but the top was insecure and could be lifted off by hand. The box was found inside Effie's cupboard, with clothing piled on top of it.

Effie accepts that the box was found in his/her house, but claims that the box was given to him/her to store for a friend called Cleo Sprouston who told Effie it was some stuff he/she would be taking to university with him/her in the Autumn but his/her mum wanted it out of the house right now. Effie denies ever opening the box to see what was inside it.

There is some forensic evidence which supports the prosecution view that Effie had touched the box but that evidence isn't strong enough to decide the question of whether Effie had ever looked inside the box.

There is also evidence from a defence expert that the handwritten label on the box is not in Effie's handwriting.

Cleo Sprouston cannot now be traced.

Possession of an item is proved if the jury is satisfied that the Accused knew about the existence of an item and had control over it. Ownership is not a necessary element of possession. You can possess something belonging to another person.

The question of possession can be a difficult one for juries, but in this case there is no doubt that Effie 'possessed' the shoe box and contents.

In cases involving illegal drugs though, Parliament has provided a defence that if a person possesses an item, which turns out to contain controlled drugs but that person neither knew, nor suspected, nor had reason to suspect that the item contained controlled drugs then he or she is not guilty. It is for the defence to prove that state of knowledge. Where the defendant raises a defence, then that defence need only be proved *on the balance of probabilities*. That is, where the court can say: "we think it more probable than not".

In this case, it wouldn't matter in deciding Effie Tillmouth's guilt that the box and contents perhaps belonged to Cleo Sprouston. If the surrounding circumstances satisfied the jury that Effie knew or suspected, or even had reason to suspect that what was in the box was an illegal drug then they would convict of possession of that drug.

In the absence of an admission of knowledge about the drugs from Effie, then the jury would have to look at the surrounding circumstances to see what they can infer about Effie's state of knowledge.

It is not disputed that the box contained the controlled drug cannabis resin.

## **The Law**

Cannabis Resin is a Class B controlled drug. Possessing any amount of it is a crime under the Misuse of Drugs Act 1971 section 5(2). The maximum sentence for possessing Class B controlled drugs is 5 years in prison or an unlimited fine.

The statutory defence of unwitting possession is found in section 28(2) of the Misuse of Drugs Act 1971 which states:

*"... in any proceedings for an offence to which this section applies it shall be a defence for the accused to prove that he neither knew of nor suspected nor had reason to suspect the existence of some fact alleged by the prosecution which it is necessary for the prosecution to prove if he is to be convicted of the offence charged."*

## **Indictment**

### **IN THE HIGH COURT AT BIRGHAM**

#### **HER MAJESTY'S ADVOCATE**

**-v-**

#### **EFFIE TILLMOUTH**

EFFIE TILLMOUTH is charged as follows:

#### **STATEMENT OF OFFENCE**

POSSESSION OF A CONTROLLED DRUG, contrary to the Misuse of Drugs Act 1971 section 5(2)

#### **PARTICULARS OF OFFENCE**

On the 1<sup>st</sup> day of March **2017** , in the dwellinghouse at 23 Peel Street, Milne Graden, you Effie Tillmouth did have in your possession a controlled drug, namely Cannabis resin, a Class B drug specified in Part II of Schedule 2 to the Misuse of Drugs Act 1971 in contravention of Section 5(1) of that Act; CONTRARY to the Misuse of Drugs Act 1971, Section 5(2)

## **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, because the witness has made an honest mistake as to what s/he saw or heard, or because there is some other relevance to the evidence. There is no dispute as to those parts of the statement that are not underlined.

## STATEMENTS OF PROSECUTION WITNESSES

### Prosecution Witness 1

Name	Constable Fran Hendersyde
Age	24
Occupation	Police officer
Date	2 <sup>nd</sup> March 2017

I am a constable in the Milne Graden Police Force. This is my first year as a police officer.

On the evening of 1<sup>st</sup> March 2017 I received confidential information to the effect that controlled drugs were being stored in the house of Effie Tillmouth. I didn't have time to obtain a search warrant because of the urgency and so we attended at that address straight away.

Upon arrival at the address we were met at the door by Effie who asked what this was all about. He/she seemed surprised to see the police there at all, but didn't react how I expected when I said it was because we were going to search the house for controlled drugs. That didn't seem to surprise him/her. Effie let us in without even asking if she had to. He/she said we were welcome to have a look around.

I proceeded to an upstairs bedroom which Effie explained was his/her own. On first inspection I found nothing suspicious but when I checked more thoroughly I found a box hidden under piles of clothing and shoes at the back of the wardrobe. It looked like a shoe box. It had a label on the front of it. The lid was askew. I opened it fully and saw what I recognised to be a lump of cannabis resin, about the size of a Rubik's Cube. There was nothing else in the box.

I took it out and showed it to Effie along with the box in which I found it. I asked Effie to whom it belonged. Initially Effie just stood there like what I'd said didn't matter. Then Effie said she had no idea but it certainly wasn't hers/his.

I have been asked how many CDs you could fit into that box and I'd say about thirty.

I can identify Effie Tillmouth again.

## STATEMENTS OF PROSECUTION WITNESSES

### Prosecution Witness 2

Name	Sergeant Jacky/ie Mertoun
Age	52
Occupation	Police Officer
Date	2 <sup>nd</sup> March 2017

My name is Jacky/ie Mertoun. I have been part of the Milne Graden Police Force for over 20 years now. I am a sergeant and experienced officer.

I was part of the search team that went to Effie Tillmouth's house on 1<sup>st</sup> March 2017 .

When I entered Effie's bedroom I was immediately aware of a strong smell that I recognised as Cannabis resin.

I was present when Constable Hendersyde unearthed a shoe box after rooting through the piles of clothes at the back of the wardrobe. I could hear Constable Hendersyde grunting with the effort. Constable Hendersyde showed me the box and the brown resinous lump inside it. I knew what it was instantly. There was nothing else in the box.

We showed it and the shoe box to Effie and asked if it was his/hers. Effie said it wasn't hers, that was for sure.

I took some samples of handwritten material from a diary in Effie's bedroom and sent that on to the Police Laboratory. In due course they confirmed that the writing on the label of the shoe box was not from the same person as Effie Tillmouth's diary pages.

Throughout the search Effie seemed surprisingly relaxed. I had checked the police computer before we set out that night and I knew that Effie had no previous dealings with the police, so I suppose I expected him/her to be more concerned than he/she appeared to be.

During the search I saw Effie pressing the buttons on his/her mobile phone. I asked what he/she was doing and Effie said s/he was just blanking some old calls and messages. That seemed odd too. We later seized the phone as a production in case it had anything of relevance on it but the calls lists and messages folders were empty.



## **EXHIBIT JN/1**



### **Prosecution Witness 3 (Section 9- uncontroversial evidence)**

Name	Louis N Wark
Age	32
Occupation	Forensic Scientist
Date	12 <sup>th</sup> March <b>2017</b>

*(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 trained in forensic handwriting analysis, DNA analysis and drugs analysis. In early March **2017** I was provided with two sets of handwritten material. One set came from diary pages and the other was a piece of paper with "old CDs" written on it.

I examined both and I am satisfied that whoever wrote the CDs label didn't write what was in the diary. The diary writer is left handed and the CDs label writer is not.

I was also sent a sealed plastic bag containing an irregular cube of resinous material. Upon opening the bag I became aware of a strong smell which I recognised as similar to the smell of cannabis resin. When I tested the brown cube that indeed proved to be cannabis resin and weighed about 70 grams.

Lastly I swabbed the box for DNA and found DNA matching the profile of Effie Tillmouth on the outside surfaces and a smaller amount on the inside of the lid too. There was unidentified DNA on the cannabis resin block, but none of Effie Tillmouth's. The report suggests that the box was found under clothes belonging to Effie Tillmouth. It is possible for flakes of skin to fall from clothing onto items like an opened box. That might account for the internal DNA hit, depending on whether the box was open or shut under the clothes. Otherwise it is possible that Effie Tillmouth has opened the box at some time. I can't be more specific.



## STATEMENTS OF DEFENCE WITNESSES

### Accused (Defence Witness 1)

Name	Effie Tillmouth
Age	18
Occupation	DJ
Date	2 <sup>nd</sup> March 2017

My name is Effie Tillmouth. I am 18 years old and I work every weekend as a DJ. I am known for my Bob Marley based grooves.

I know that the police found cannabis resin in my wardrobe. I couldn't believe it. They'd arrived at the door and of course I invited them in. I knew I didn't need to let them in but I didn't think there was anything to hide. I am quite a relaxed and trusting person by nature.

I showed them which one was my bedroom and they searched it. It took ages so I was just sitting, using my phone killing time until they left. I like to maximise the free space on my phone and so I was deleting some stuff. It wasn't easy in handcuffs I can tell you.

Then they said they found drugs in a shoe box. As soon as I saw the box I cursed Cleo. Cleo was a friend of mine from the party scene. I knew s/he was getting pressure from his/her mum to clear out some old stuff so I'd agreed to store some stuff over the summer. I thought it was old CDs. That's what it said on the label. The box lid was on tight when I got it and I didn't want to pry into Cleo's stuff so I never opened it.

I can't believe Cleo has put me in this position. I think s/he was in jail at the start of the summer but I know s/he is out now. I've tried calling but I get no answer. Cleo is blanking me. I can't bring him/her as a witness since I can't reach him/her and don't know where s/he is. I know the police don't believe me but Cleo is definitely a real person.

When they showed me the block of resin I just about fell over. I was honestly struck dumb with shock. I don't think I said anything in answer to their questions, but if I did I would have said it was Cleo's stuff, not mine.

The police say there was a smell of drugs in my room. No way. I do keep my old training shoes in that wardrobe. Maybe that's what they were talking about.

I have never been in trouble with the police. I am not the sort of person to take drugs. I never thought Cleo was either.

## STATEMENTS OF DEFENCE WITNESSES

### Defence Witness 2

Name	Jude Rutherford
Age	40
Occupation	Builder
Date	2 <sup>nd</sup> March 2017

My name is Jude Rutherford. I'm Effie's step mum/dad. I'm 40 years old and I work in construction.

I was called upstairs when the police found the drugs. I couldn't believe it. Effie isn't really like that. I have never had any trouble with the police and nor has Effie.

I have been asked about a friend of Effie's called Cleo. I remember taking calls from someone by that name but I don't think I ever met them. I don't think Cleo was a close friend of Effie's, but s/he definitely existed.

I don't remember Effie saying s/he was storing stuff for Cleo but we've got plenty of room in the garage so Effie would have known storing stuff would have been OK if need be. Effie is the sort of person who would help you out if you needed it.

I can tell you that if I had ever smelled drugs in Effie's room I'd have had the truth from him/her in about two seconds flat. I never did smell anything like that. I know the smell from some of the guys on the building site.

To be honest, in the last few weeks Effie has taken to storing everyone's shoes in his/her wardrobe so I'd be surprised if the police could smell anything else in there.