

# St. Margaret's MiniTrial 2010

## *Forensic Science Module*



[The Faculty of Advocates](#)

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[MiniTrial.org.uk](http://MiniTrial.org.uk)

## Case No. 3 – Assault to severe injury (Forensic Science Module)

HER MAJESTY'S ADVOCATE

v.

NICHOLA WYLIE

### 1. The Background

The background materials are set out in the original "*St Margaret's MiniTrials 2010*" starter pack – available separately – which should be referred to for full details of the court procedure to be followed. See in particular Chapter 2 "The Students' Handout" (page 12 onwards). The instructions for the trial can be found at pages 17 to 27.

This current module contains case No. 3 which introduces and concentrates on the evidence of forensic scientists – as part of St Margaret's contribution to National Science and Engineering Week 2010. The materials were inspired by Nichola Mortimer – a teacher at St Margaret's. See <http://thepaisleysnail.blogspot.com/>

The circumstances leading to the trial are as follows:-

On 2 June 2009 the complainer, Diane Saddler, was walking home along East Suffolk Road, Edinburgh (outside St Margaret's School – between School House and Buchanan Hall) when she was confronted by two youths. One was carrying a knife which he or she was waving in front of him. The youth with the knife lunged forward striking Ms Saddler on the left arm. The other youth shouted something and then struck Ms Saddler a heavy blow on the face with his or her fist.

Many of the background facts have been agreed – apart from the evidence of the forensic scientists. Their expert report is an essential part of the Crown case – and it requires to be completed by the St Margaret's forensic scientists prior to trial.

Nichola Wylie has been charged with assault to severe injury.

Did Nichola Wylie assault Ms Saddler as libelled (as set out in the indictment)?

... or is there a reasonable doubt?

**2. The Indictment (the charge containing the allegations)**

**HER MAJESTY'S ADVOCATE**

**v.**

**NICHOLA WYLIE**

The indictment is in the followings terms: -

**"NICHOLA WYLIE, Flat 3/2, 111 Broughton Street, Edinburgh, you are indicted at the Instance of Her Majesty's Advocate and the charge against you is that:**

**On 2 June 2009 in East Suffolk Road, Edinburgh, while acting with another, you did assault Diane Saddler strike her on the arm with a knife or similar instrument, punch her on the head and knock her to the ground all to her severe injury."**

### **3. Witnesses, Agreement, Speeches and Charge**

#### **Witnesses**

There will be 3, or perhaps 4, witnesses. The Crown witnesses will be:

1. Diane Saddler, the complainer;
2. Sarah McGhee, Forensic Scientist; and
3. Jennifer Ogden, Forensic Scientist.

Nichola Wylie, the accused, may (or may not) give evidence. It is, of course, her right to remain silent and no adverse inference can be drawn if she elects not to give evidence or say anything. Witness statements are annexed (1).

#### **Joint Minute**

There will also be a Joint Minute of Agreement in relation to the background circumstances and the Crown Label Productions - based on the annexed draft (2) - which should be read to the jury by the Crown Junior during the trial.

#### **Expert Report**

Importantly, the Crown Productions will also include an expert Report which is to be prepared by the St Margaret's Forensic Scientists - based on the template annexed (3). The evidence of the skilled witnesses is essential to the Crown case.

#### **Jury Speeches**

Two outline Speeches to the Jury are annexed (4) - to be revised and completed by the Crown and the Defence lawyers as appropriate.

#### **Charge**

The "Sheriff" will be a member of Faculty who should amend the outline charge annexed (5) to suit the circumstances.

#### **Jurors**

Draft juror citations are also annexed. Jurors may be provided with paper and pencil so that they can take notes during the trial if they wish.

#### 4. Summary - The sequence of events during the trial

1. The Court **convenes** /assembles - the Sheriff is brought on to the bench
2. The Clerk "**calls the diet**" - formally starts the case against the accused
3. The Accused's **plea** is tendered by his defence lawyer - "Not guilty" in this particular case
4. The Clerk **ballots the Jury** - chosen from those cited for jury service
5. The Clerk **reads the indictment** (charge) to the jurors
6. The Clerk **administers the oath** to the jury
7. The Sheriff **outlines the procedure**
8. The witnesses give **evidence**
9. The Sheriff puts the witnesses on "**oath**" to tell the truth
10. **The Crown Case** is presented as follows:
  - Witness 1** for the Crown - "**examination-in-chief**" by the Crown
  - Witness 1 - "**cross examination**" by the defence
  - Witness 2** for the Crown - examination in **chief** by the Crown.
  - Witness 2 - **cross-examination** by the defence
  - Witness 3** for the Crown - examination in **chief** by the Crown.
  - Witness 3 - **cross-examination** by the defence
11. **The Defence Case**, if any, is presented as follows:
  - The accused** - "**examination-in-chief**" by the Defence
  - The accused - "**cross examination**" by the Crown
12. **The Crown Speech** to the Jury - seeking conviction
13. **The Defence Speech** to the Jury - seeking acquittal
14. **The Sheriff's Charge** to the Jury - giving them directions in law
15. **The Jury retire** - to consider their verdict
16. **The Verdict.**
17. **Plea in Mitigation and Sentence** – if appropriate
18. **The End** - Feedback please.

## ANNEXATIONS

### *(1) Witness statements*

#### Crown witness No 1 - Witness Statement

### **Diane Saddler,**

Aged 26, residing at 11 McKay Avenue, sales assistant

On 2 June 2009 I was walking home along East Suffolk Road, Edinburgh. When I was outside St Margaret's School, between School House and Buchanan Hall, I was confronted by two youths. It must have been about 3.00 pm. I can't remember what they were wearing - but I saw one of them very clearly.

One of the youths was carrying a kitchen knife with a blade about 5 inches long which he (or I suppose it might have been she) was waving in front of him.

The other youth wasn't carrying anything - but he (or I suppose it might have been she) was saying in a low voice "Go on - slash her".

The first guy lunged towards my face with the knife but I managed to deflect the blow with my left arm. I screamed. It was very painful. The knife cut deep into my forearm.

Then the second guy shouted "You've only cut her arm" - and then he (the second guy) hit me hard across the face with a backhand blow from his fist. I was knocked to the ground with the force of the blow.

I saw someone (who I now know was a plain-clothes police officer) chase after the youths and I saw the officer detain one of them a few hundred yards away.

I was taken to the Royal Infirmary, Edinburgh, where I received 24 stitches to my left arm and treatment for a broken nose. My face was black and blue.

I can identify the second youth - the one without the knife. He was the one who punched me. I will never forget his face. He was the one detained by the police.

I am sorry but I could not identify the youth who had the knife. He ran off towards the main road - Craigmillar Park.

**Crown witness No 2 - Witness Statement**

**Sarah McGhee,**

Aged 30, BSc, Forensic Scientist,  
c/o St Margaret's School, Forensic Services (Edinburgh).

Along with my colleague Jennifer Ogden, I prepared the Joint Report dated 19 March 2010 (which now forms Crown Production No 1).

It is a true and accurate report.

I can explain the report in evidence if required.

I cannot identify the accused.

**Crown witness No 3 – Witness Statement**

**Jennifer Ogden,**

Aged 30, C Biol MIBiol, Forensic Scientist,  
c/o St Margaret's School, Forensic Services (Edinburgh)

Along with my colleague Sarah McGhee, I prepared the Joint Report dated 19 March 2010 (which now forms Crown Production No 1).

It is a true and accurate report.

I can explain the report in evidence if required.

I cannot identify the accused.



**Witness 4? The Accused**

**Nichola Wylie,**

Aged 24, BSc, Biomedical Scientist, residing at Flat 3/2, 111 Broughton Street, Edinburgh

I totally deny all the allegations against me.

I am not guilty of this crime.

On the advice of my lawyer I have no further comment to make at this stage.

(2) *Joint Minute of Agreement*

SHERIFFDOM of Lothian and Borders at Edinburgh

**JOINT MINUTE OF AGREEMENT**

in the cause

HER MAJESTY'S ADVOCATE

Against

NICHOLA WYLIE

---

A For the Crown and

B For the Panel, Nichola Wylie, have agreed and hereby agree as follows :-

1. that on 2 June 2009 in East Suffolk Road, Edinburgh (outside St Margaret's School, between School House and Buchanan Hall) Diane Saddler, the complainer, was assaulted with a knife or similar instrument, punched on the head and knocked to the ground all to her severe injury. Ms Saddler had been walking home when she was confronted by two youths. One was carrying a knife which was being waved in the air. The youth with the knife lunged forward striking Ms Saddler on the left arm. The other youth shouted something and then struck Ms Saddler a heavy blow on the face with a fist. One youth was detained at the scene. The other ran off towards the main road - Craigmillar Park.
2. that the Crown Label Productions (Nos 1 to 16 inclusive) are the articles described on their respective labels and that they were lawfully obtained from the persons and places referred to on the labels..
3. that said articles were examined by Sarah McGhee and Jennifer Ogden, both forensic scientists at St Margaret's School, Forensic Services (Edinburgh) on 14 March 2010 and that Crown Production No 1 is their report of said examination.
4. That all the articles examined were delivered to the Forensic Services laboratory in one large cardboard box. The individual items were contained within paper bags. Many of the bags were unsealed and lying open when they arrived. The items were examined in Room 13 of the Forensic Services laboratory on 14 March 2010.

IN RESPECT WHEREOF

*Signed A*

for the Crown

*Signed B*

for the Panel Nichola Wylie

*(3) Draft EXPERT REPORT: to be used as a template and completed by the forensic scientists - and then lodged and intimated as Crown production No. 1.*

**St Margaret's School**

**0001/10**

**Forensic Services (Edinburgh)**

**Case against: Nichola Wylie**

**Report in terms of the Criminal Procedure (Scotland) Act 1995, Section 280.**

I, Sarah McGhee, being authorised to make reports for the purposes of Section 280(4) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) and I, Jennifer Ogden, being authorised to make reports for the purposes of Section 26(2) of the Criminal Justice (Scotland) Act 1980 as amended (“the 1980 Act”) and Section of 280(4) of the 1995 Act, hereby report as follows:

**Information provided and purpose of examination**

At approximately 18.00 hours on 2 June 2009 at the request of Lothian and Borders Police we attended East Suffolk Road, Edinburgh. We were directed to an area outside St Margaret's School, between School House and Buchanan Hall. We were informed that Diane Saddler had been seriously assaulted with a knife there earlier that day and that one of two attackers had been seen heading away from the scene - towards Craigmillar Park. We were requested to examine the scene where we observed the recovery of a grey wool scarf and a bottle. We also noted a footwear impression in some soft earth along with dark stains on the concrete pavement.

We were subsequently requested to examine the home address of Nichola Wylie at Flat 3/2, 111 Broughton Street, Edinburgh – where on 24 December 2009 we observed the recovery of a large black handled knife, a hooded jumper and a pair of trainers.

We were subsequently requested to examine certain articles of clothing and other articles (as undernoted) which were received on 12 March 2010 from officers of Lothian and Borders police. All the items were examined in the Forensic Services laboratory on 15 March 2010.

## **Examination and Results**

### **Reference Samples**

*[Crown Label No 5]*

DNA 1 EVIDENTIAL SAMPLE LABELLED “Taken from Diane Saddler at 11.30 hours on 12 July 2009”

*[Crown Label No 6]*

DNA 2 EVIDENTIAL SAMPLE LABELLED “Taken from the accused Nichola Wylie at 15.00 hours on 24/12/2009”

The reference samples from Diane Saddler and Nichola Wylie were analysed and a DNA profile was obtained from each sample. There profiles were different to each other.

### **1. Articles relating to East Suffolk Road, Edinburgh**

#### **Hooded Top**

*[Crown Label No 7]*

1 X BLACK (TOPSHOP) LABELLED “Found in East Suffolk Road, Edinburgh 2/6/09”

The hooded top was examined and

#### **Bottle**

*[Crown Label No 15]*

1 X BOTTLE (TONIC WINE - EMPTY) LABELLED “Found beside grey scarf found in East Suffolk Road, Edinburgh 2/6/09”

The bottle was examined for finger and palm prints and the findings on examination were as follows:

**Footwear Impressions**

*[Crown Label No 10]*

FOOTWEAR IMPRESSION (JO2) LABELLED “Found in soft earth East Suffolk Road, Edinburgh 2/6/10”.

The footwear impression was examined and

**2. Articles relating to Diane Saddler**

**Jacket**

*[Crown Label No 13]*

1 X BLACK JACKET (BLOODSTAINED) LABELLED “Taken from Diane Saddler at 11.30 hours on 12 July 2009”

The jacket was examined and

**Handkerchief**

*[Crown Label No 11]*

1 X LARGE WHITE LINEN HANDKERCHIEF (SOILED) LABELLED “Found in jacket taken from Diane Saddler at 11.30 hours on 12 July 2009”

The handkerchief was examined and

**3. Articles relating to the accused Nichola Wylie**

**Trainers**

*[Crown Label No 2]*

1 X TRAINER RIGHT FOOT (ADIDAS) LABELED “Found in wardrobe in bedroom No 2 of the accused’s Flat 3/2, 111 Broughton Street, Edinburgh”.

*[Crown Label No 3]*

1 X TRAINER LEFT FOOT (ADIDAS) (BLOODSTAINED) LABELLED “Found in wardrobe in bedroom No 3 of the accused’s Flat 3/2, 111 Broughton Street, Edinburgh”.

The trainers were examined and

**Knife**

*[Crown Label No 1]*

1 X BLACK HANDLED KNIFE (LARGE) LABELLED “Found in kitchen drawer of the accused’s Flat 3/2, 111 Broughton Street, Edinburgh”

The knife was examined and found to be a kitchen knife measuring approximately 32.2 cm in total length. The single edged non-serrated blade measured approximately 20.3 cm with a maximum blade width of 2.4 cm. The knife was examined for the presence of bloodstaining. The knife was also examined for the presence of finger and palm prints.

The findings on examination were as follows:

**Blood lift**

*[Crown Label No 9]*

BLOOD LIFT (JO1) - DROPPED BLOOD SPOTS ON UPPER SURFACE (TOE AND TONGUE) OF TRAINER LEFT FOOT (NIKE “UBIQUITOUS”) LABELLED “Found in wardrobe in bedroom No 2 of the accused’s Flat 3/2, 111 Broughton Street, Edinburgh”.

The blood lift was examine and

**Conclusions**

*Conclusions to be formulated and completed by forensic scientists*

The findings from the above would support the following assertions:

**Technical Issues**

*Summary explanations of the technical issues - to be completed by forensic scientists*

**1. DNA**

*To be completed by forensic scientists*

**2. Blood Staining and Blood Lift**

*To be completed by forensic scientists*

**3. FingerPrint**

*To be completed by forensic scientists*

**4. Footwear Impression**

*To be completed by forensic scientists*

**5. Trace Fibres**

To be completed by forensic scientists

The conclusion(s) included in this report are based on the scientific findings and the information provided. If the information changes we will reconsider the conclusion(s) within this report.

***Sarah McGhee***

BSc

Forensic Scientist

***Jennifer Ogden***

CBiol MIBiol

Forensic Scientist

Date: 19 March 2010



(4) *Jury Speeches*

## Crown Speech to the Jury - a possible outline

### Ladies and Gentlemen of the Jury

I now have the opportunity to address you on behalf of **the Crown**.

It is my function to present the evidence - but it is your function to decide whether on the evidence the Crown have proved the accused "Guilty" beyond reasonable doubt.

You may have little difficulty in deciding that someone assaulted Ms Saddler in the way described in the indictment but "Who was involved in the assault?"

The Crown say **there is no reasonable doubt that the accused Nichola Wylie was responsible**.

On the evidence, the factors pointing to Nichola Wylie's guilt are as follows: -

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

In short, the Crown say that Nichola Wylie's **guilt has been proved beyond reasonable doubt** and that you should convict.

I invite you to return a verdict of "**guilty**".

## Defence Speech to the Jury - a possible outline

### Ladies and Gentlemen of the Jury

I now have the opportunity to address you on behalf of **the accused** – Nichola Wylie. It is important to remember that in Scotland every accused person is **presumed to be innocent**.

It is up to the Crown to prove an accused person guilty - and to prove his guilt "beyond reasonable doubt". That is a high standard.

If there is any reasonable doubt about Ms Wylie's guilt, then you must acquit.

In this case, the Crown has simply failed to prove that Ms Wylie was involved in any assault - far less that she was responsible for using a knife.

The factors which show **there is a reasonable doubt** are as follows: -

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

In short, on the evidence, **guilt has not been proved**. There is a reasonable doubt - and Ms Wylie is entitled to the benefit of that doubt. Ms Wylie should be acquitted - and I invite you to return a verdict of "**not guilty**".

**(5) Charge****The Sheriff's Charge to the Jury**

*(A possible outline - to be revised by the presiding Sheriff in due course)*

**LADIES and GENTLEMEN OF THE JURY**, it is now my duty to give you directions as to the law in this case.

You and I have **DIFFERENT FUNCTIONS**.

It's MY FUNCTION to deal with questions of law and you must accept and apply my directions on **THE LAW**.

But YOU are the judges of **THE FACTS**.

It's **YOUR FUNCTION** to assess the evidence. It's for you to decide: - what evidence you believe and what you disbelieve; what evidence you find reliable and what unreliable. It is your recollection and your assessment of the evidence that counts - not mine.

There are **THREE VERY IMPORTANT LEGAL PRINCIPLES** which I wish to draw to your attention at the outset.

1. **THE PRESUMPTION OF INNOCENCE**. Every person is presumed innocent and he remains innocent unless and until the Crown satisfies you that he is guilty beyond reasonable doubt. It is up to the Crown to prove the guilt of the accused. If they fail to do so, then the accused must be acquitted.
2. **THE STANDARD OF PROOF** - is proof of guilt **BEYOND REASONABLE DOUBT**. A reasonable doubt is something that would cause you to hesitate or pause before taking an important decision in the practical conduct of your own life. If there is any doubt about an accused's guilt and it is a reasonable doubt, not a fanciful or hypothetical one, then you must acquit.
3. The Crown must prove guilt by what is called **CORROBORATED EVIDENCE**. That means by evidence from more than one source. It is not every detail that requires to be corroborated. It's the essentials of the case, such as the commission of the crime and involvement of the accused. Corroboration need not come from two eyewitnesses - circumstantial evidence can be enough (as I will explain in a moment).

Remember that the burden is on the Crown throughout. **An accused** is in a completely different position. An accused never needs to prove anything at all. An accused never requires to give evidence - and you can draw no adverse inference if an accused elects not to give evidence. Evidence in defence never needs to be corroborated. If the accused's guilt is

proved beyond reasonable doubt you should convict. But if on ALL the evidence there is any reasonable doubt then you must acquit.

In Scots law an “**assault**” is defined as any deliberate attack on another person with evil intent. Evil intention is essential.

I must also give you directions in relation to the legal principle known as “**concert**” or “art and part guilt” – sometimes called “joint criminal responsibility”. As a general rule a person is only responsible for his own actings. However, where two or more persons are engaged together in a known common criminal purpose, then each participant in that enterprise is responsible not only for what he himself does but for what everyone else does in pursuance of the common criminal purpose. The Crown say this was a “concerted attack”.

The use of a **weapon** calls for special consideration. Where a weapon is used, an unarmed attacker may be held responsible *if* he knew his companion was armed and was likely to use the weapon. So if an accused person, having seen his companion with a weapon in the course of an attack, joins in and continues the attack then as a matter of law he is guilty along with the companion of assault with the weapon.

In this case **the question for you** is whether the prosecutor has proved beyond reasonable doubt that the accused Nichola Wylie assaulted Diane Saddler as set out in the indictment.

Please take special care when considering the evidence relating to **identification**. It is essential for the Crown to prove by corroborated evidence that the accused has been identified as a person responsible for the crime alleged (not just someone who was there at the time). If the Crown fails to do so, or if there is any reasonable doubt about identification or the accused’s involvement, the accused must be acquitted. Yours is not an easy task and you need to approach it with great care. Mistakes have been made in court cases in the past and these have to be guarded against. The quality of the evidence is a critical issue.

In this case, the Crown rely upon “**circumstantial evidence**” (as opposed to the direct evidence of eye witnesses). It is open to you (the jury) to draw inferences from facts which have been proved to your satisfaction provided the inference is a reasonable one and, importantly, that it has a sound basis in the evidence. Circumstantial evidence is simply evidence about various facts and circumstances which, when they are taken together, may connect an accused with the commission of a crime. Individually it may be that each fact establishes very little but it may be (it’s a question for you) that in combination they justify the conclusion that the accused was responsible for the crime. It’s really a matter for you to judge applying your common sense – but you must not speculate or guess.

You will have to decide:-

1. What facts, if any, do you find proved;
2. What weight, if any, do you give to each fact;
3. Taking the facts together, how powerful and convincing (or otherwise)

is this body of evidence;

4. What conclusions, if any, can you draw from it, and, in particular,
5. Can you can infer, beyond reasonable doubt, that the accused was involved in the commission of the crime as alleged by the Crown?

In this case, **the evidence of the two forensic scientists is critical** to the Crown case. If there is any reasonable doubt about their evidence the accused must be acquitted. You should judge all the witnesses in the same way - whether they are members of the public or skilled witnesses or an accused. The evidence of skilled witnesses may assist you - but the decisions in this case are for you (not the witnesses).

The **evidence** is very fresh in your minds - and I propose to say nothing further about it.

In assessing the evidence you should consider carefully all of the points made by the prosecution and by the defence. Having done that you should come to a **verdict** according to the principles which I have explained to you.

It is open to a jury to return a verdict under deletion of the words which have not been proved. But you must bear in mind that in this case there is a Joint Minute of Agreement (which has been read to you in the course of the trial) which sets out facts which are "deemed to have been duly proved" and you must proceed on that basis.

THERE ARE **THREE VEDICTS** OPEN TO YOU

1. Guilty or
2. Not Guilty or
3. Not Proven

The last two ("not guilty" and "not proven") are both verdicts of acquittal.

Your verdict can be unanimous or by majority.

Before you can find an accused guilty there must be at least EIGHT of you in favour of guilty verdict.

When you have reached a verdict please tell the Clerk of Court.

Please also appoint a spokesperson to speak for you when you return to give your verdict.

WOULD YOU NOW PLEASE **RETIRE** AND CONSIDER YOUR VERDICT.

## JUROR'S CITATION

Dear \_\_\_\_\_

You are hereby **CITED** to **ATTEND**

Buchanan Hall, St. Margaret's MiniTrial Courthouse,  
East Suffolk Road, Edinburgh, EH16 5PJ

on

**1 April 2010 at 9:40 am**  
**FOR JURY SERVICE.**

Jurors make a vital contribution to the justice system in St Margaret's. Only in exceptional circumstances, and on written application, may you be excused from jury service. Your failure to appear when cited could subject you to a fine or imprisonment. Please do not attempt to discuss the trial with those involved in the case.

Yours sincerely,

Signed on behalf of the Clerk of Court  
St. Margaret's MiniTrial Courthouse

22/3/10

## JUROR'S CITATION

Dear \_\_\_\_\_

You are hereby **CITED** to **ATTEND**

Buchanan Hall, St. Margaret's MiniTrial Courthouse,  
East Suffolk Road, Edinburgh, EH16 5PJ

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Yours sincerely,

Signed on behalf of the Clerk of Court  
St. Margaret's MiniTrial Courthouse

22/3/10