

# MiniTrials II

## East Ayrshire 2006



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

with new road traffic materials from

Sean Murphy QC

[19 May 2006](#)



[The Faculty of Advocates](#)



# MiniTrial

**An initiative from Scottish Lawyers - supported by The Faculty of Advocates, The Law Society of Scotland and The W.S. Society.**

The MiniTrial homepage is [www.minitrial.org.uk](http://www.minitrial.org.uk) .

## Chapter 1 – Outline

"MiniTrials" are simulated court cases designed to be conducted by secondary schools - within roughly two double periods - or as tailored to suit the class.

Students take part in a reconstruction of a criminal jury trial. They convene the court, hear the evidence and return their own verdict - with the help of lawyer volunteers.

The MiniTrial materials have been prepared by Scottish lawyers - and are based on what actually happens in a Scottish Sheriff Court. They are designed to help students learn about the Scottish legal system, courts and the people who appear in them in an interesting and enjoyable way. MiniTrials are quite simple to run – and they do they not involve lengthy preparation. The trials can be exciting and are conducted seriously along the lines of real trials. The materials can be tailored to suit the interests and abilities of the class concerned. The aim is to improve understanding and discussion about our legal system. Materials are available free - by email or download from [www.minitrial.org.uk](http://www.minitrial.org.uk) .

### **Students will:**

1. Become familiar with the role of a criminal trial court. They will also be introduced to court procedure and the function of the jury.
2. Develop an appreciation for the roles of various people who work in the courtroom.
3. Practice communication and critical thinking skills as they prepare and present their case.



## MiniTrial Starter Pack – East Ayrshire 2006

**All the Materials you need are in this starter pack.**

They include: -

Chapter 1	<b>Outline</b>	Page	<b>1</b>
Chapter 2	<b>Student Handout</b> on MiniTrial Procedure	Page	<b>12</b>
Chapter 3	<b>Case Papers</b>		
	for <b>Case No. 1 - Dangerous Driving</b>	Page	<b>29</b>
	for <b>Case No. 2 - Possession of Drugs</b>	Page	<b>51</b>
Chapter 4	<b>Web-links</b> some law-related links	Page	<b>74</b>

### **Time needed:**

About two double class periods. An introductory session, then some preparation time followed by an actual trial - or as tailored to suit the class.

### **Class level:**

Senior classes. To run a MiniTrial in a school the minimum number of students is 9 - allowing for a jury of at least one! When two schools are involved – each school will need a minimum of 4 students.

Teachers may wish to check beforehand whether any particular student(s) should for personal reasons not take part.

### **Teacher's participation:**

School teachers are welcome to participate as much - or as little - as they like. Teachers are free to use the MiniTrial materials as they think best – and are encouraged to use lawyer volunteers to help prepare and conduct the trial if possible.

It would be a help if, as a minimum, the teachers could introduce the lawyer volunteers to the class and pass on whatever information might help to make their MiniTrial a success.

It will be assumed that a teacher will be in attendance at all times - even if not actively participating in the trial.

Teachers are welcome to play a more extensive or a starring role if they wish.



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### Real Courtrooms

Thanks to the Sheriff Principal and the Sheriff Clerk in Kilmarnock we will be able to use real courtrooms for the actual trials.

The date for your diary is:-

**Saturday 18 November 2006**

***8.30 am (to be confirmed)***

**Kilmarnock Sheriff Court,  
St Marnock Street  
Kilmarnock KA1 1ED**

For ease of reference we will all be using the same “MiniTrial Starter Pack 2006” throughout.

Those materials have been designed basically for use in a classroom.

Please bear in mind that you will have to **be flexible and adapt the basic materials to suit the current situation** where several schools will be running trials in real courts – perhaps with several lawyers as helpers.

Further details of the actual MiniTrial arrangements “on the day” will be provided prior to the trials.

If you have any questions or need assistance – please ask your helpers.



### Mini Trial Procedure - some suggestions

1. Before the actual trial, please ask the teacher to allocate students to the various parts in the mock trial. The roles are described in more detail the **Student Handout** on MiniTrial Procedure (see **Chapter 2** below). Please feel free to use the suggested timetable and the role allocation forms (in Chapter 2) as aids to preparation. Up to three students can be selected to be the lawyers for each side of the case. If you wish, one student can conduct examination-in-chief, one the cross-examination, and the other the speech to the jury. Or the students can share the tasks. If you feel that asking three students to speak causes complications then nominate just one (or perhaps two) to ask the questions - and ask the other two to help him / her prepare and then sit beside them in "court". To keep the trial moving and to inject more realism, a lawyer volunteer could act as Sheriff.
2. Assign students to **roleplay** the accused, the Clerk of Court, witnesses, members of the jury, court officer, policeman and reporters / media representatives – depending on numbers.
3. Before starting the trial, spend some time going over the basis court procedure and describe **the main steps** of a trial as outlined in the "Student Handout" (see Chapter 2 below) - in whatever detail is appropriate for the class concerned and the time available. There is a summary of the procedure in the handout.
4. For the purposes of MiniTrial there will be **no re-examination** of witnesses (unless the pupils are comfortable with the idea) and there will be **no objections** by the lawyers. If there are objections (and you may not be able to prevent them) - reserve discussion of them for later. Be flexible and play things by ear. It's meant to be fun.
5. **Prepare** enough copies of the relevant papers in advance.

The teacher and lawyer volunteers should probably have a complete set of **MiniTrial materials** each.

The students need only get copies of "**Chapter 2- The Student Handout**" and copies of the selected cases from "**Chapter 3 - MiniTrial Case Papers**".

6. **Timing.** You may think it best to spend one period preparing for the trial and discussing things - and a second period actually running it. Teachers will know what best suits their students.

Try to find everyone a role to play - even if it means having a jury of more than 15. Remind jurors and other that they will have to pay close



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attention to what happens in the court if they are to carry out their roles properly - and return a true verdict.

Allow a double period for each MiniTrial.

7. Arrange the classroom furniture so that it roughly resembles the **layout** of a court (or as near as possible). Some imagination may be required. See the "Court Layout" in the student handout below. There is an interactive illustration of a Sheriff & Jury Court Scene on the MiniTrial web-site at [www.minitrial.org.uk](http://www.minitrial.org.uk) . A "gavel" is not used in the Sheriff Court – or the High Court.
8. Provide the students with instructions along the following lines:

### Lawyers

Tell the lawyers (students) to read all the papers - the facts, the court documents and all of the witness statements (including the witnesses for the other side). They should prepare

- questions for all the witnesses, and
- a speech to the jury.

Provide them with copies of the **Student Handout** (Chapter 2 below) to use in their preparation. This could be homework.

Ask the teacher if it would be helpful if the lawyers had help from other students - so that they could prepare in a small group. When they are in court (the class-room) the lawyers (and their helpers) should sit at a table in "the well of the court" in front of the Sheriff. The Prosecutor should be on the right hand side (as the Sheriff looks at the court from the bench). The defence should be on the left.

Explain the difference between credibility (by asking "is the evidence to be believed?") or reliability (by asking "is the evidence to be relied upon?").

You may even wish to introduce basic advocacy **skills** - creating an event, short and simple questions, open and closed questions and so forth.

The lawyers should assume that no-one knows anything about the case. They may wish to set a goal for themselves – such as trying to allow the witnesses paint a vivid picture of each of the relevant facts so that the jury will remember them in the jury room.

Be careful not to risk "information overload". The basic idea is to help students become more familiar with the legal process and to have some fun at the same time.



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With more experienced student, you may wish to give the students some more details about of what the lawyer is trying to achieve. You could outline, in simple terms, some of the **main concepts** by reference to: -

- the draft Crown speech,
  - the draft defence speech and
  - the draft Sheriff's charge
- copies of which are all with the case papers (in Chapter 3 below).

Lawyers should remember to bring notebooks (or paper) and pens with them – so that they can take notes of the evidence during the trial and add to their written submissions if need be.

### Accused and Witnesses

Tell the accused and each witness to read his/her **statement** at least three times so that he/she will be prepared to answer questions. This could be homework. The accused should sit in "the dock" in the middle of the court - on the far side of the lawyers from the bench. Another seat should be provided at one side of the court – to mark the position of the "witness box". Normally witnesses would remain in the "witness room" until they are called to give evidence – but if that is not practicable in school they could simply sit in the public gallery until called.

It is extremely important that all the witnesses and the lawyers asking the questions can be seen and heard by the others in the class. Please make a point of asking each witness to stand (rather than sit) while giving their evidence and to speak up loudly and clearly so that everyone can see and hear what they have to say.

The Sheriff can remind them gently if need be.

### Sheriff

The sheriff should read the **Student Handout** (Chapter 2) and review the procedure for the oath that he/she will administer to each witness. This is the Sheriff's "homework". The Sheriff should sit behind a table - which acts as "the bench" - facing out over the Court.

If questions are raised by the class during the MiniTrial the Sheriff (or some of the other lawyers present) could try to reply in the form of a mock "Note by Counsel" or a "Solicitor's letter" – to illustrate what those sort of documents might look like. In most cases, however, a verbal response will be sufficient.



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### **Clerk of Court**

The Clerk should read the **Student Handout** (Chapter 2) and review the procedure for the oath that he/she will administer to the jury and for reading the indictment (statement of charges). This could be homework. The Clerk of Court sits in front of the Sheriff (or if that is not practicable beside the Sheriff for MiniTrial) - also facing out over the Court. The Clerk should also be familiar with the trial timetable. The Clerk should be asked to monitor the times of the various stages of the trial and be able to indicate to the Sheriff when they should be drawing each stage to a halt. A "timer" or stopwatch can help.

It would be helpful if the Clerk of Court could bring extra copies of the indictment with them – so that they can be distributed to the jury at the start of the trials for reference. The jury may also wish to take notes - and pens or pencils should be available if required.

### **Court Officer**

Tell the Court Officer to collect the Sheriff from "chambers" (the Sheriff's room / part of the classroom or corridor) and bring him or her on to the bench - saying "Court Rise" as the Sheriff enters and leaves. The Court Officer should use a loud voice – so that everyone in the room can hear. If there is a lot of noise in the room at the time it may be necessary to use a very loud voice. The Court Officer also ushers the witnesses to and from the witness box when they are called to give evidence.

### **Reporters / Media representatives**

Tell the reporters that they can sit in court. They are to prepare a very short newspaper article based on what happens at the trial.

### **Jurors**

The jurors in MiniTrial are chosen from the remaining students. They should imagine that they have all been cited to attend court for jury service (to act as jurors) and that they have been selected for jury service - by Clerk of Court. When the Clerk of Court asks the jurors to take their places in "the jury box" – the jurors should make their way to the jury box / seats on the other side of the court from the witness box. There are some "Jury Observation Sheets" with the case papers (in Chapter 3 below) which the jurors may wish to look at as homework. Such sheets are not normally issued to jurors, but they may aid discussion in MiniTrials.





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### Reporters / Members of the Public

The remaining students who are not on the jury - can be reporters / media representatives who are asked to prepare a short news report of the trial.

If there are other pupils present who would prefer not to take any active part they can be members of the public or relatives.

Preferably each student should have a task to complete and no-one should feel left out.

9. For the purposes of MiniTrial, a simplified procedure is used for **jury selection**. The Clerk of Court simply asks the jurors to take their seats in the jury box. In most cases, the teacher can simply prepare a list of jurors in advance. If need be the Clerk of Court can call out their names as a reminder. Actual pieces of paper in a ballot box or glass are not required and there is no right to challenge the jurors selected in a MiniTrial. For the purposes of MiniTrial, the number of jurors can be increased to over 15 to include more students (or all of them) if need be – or the number can be reduced below 15 to suit the class size. An odd number is best.
10. **The trial begins** with the calling of the first witness by the prosecution. This is followed by the examination of the witnesses (prosecution case first then the defence case) and then speeches to the jury (prosecution first then defence). The Sheriff gives his "charge" and the Jury retire to consider their verdict. The trial may take about an hour - but you can speed things up or slow things down to suit the time available. The simple aim of MiniTrial is to increase the students' knowledge of courts and trials and to encourage discussion about the people and processes. Questions raised by anyone can be noted down to be asked after the trial. Please ask the Clerk of Court to monitor the times of the various stages of the trial following the suggested timetable (outlined in Chapter 2) and to indicate to those speaking when they should be drawing to a halt. A stopwatch or a kitchen timer can help to keep track of the times - and give an audible indication of when to stop.
11. The judge should "**charge**" the jury at the end of the trial using the jury instructions contained in each set of case papers. The charge can be kept short – but it is probably helpful to include the essentials as many people may not know what they are. The jury should require only a few minutes to reach a **verdict**. After they have announced the verdict, you could ask the jurors to explain how they reached their decision.
12. Ask the **media** representatives what kind of story they would have written. What was most newsworthy about the trial? What would grab the reader's attention? Did they agree with the jury's decision? Who gave the



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strongest testimony? If time is running out, this step can be done while the jury is deliberating.

13. Once a verdict has been returned, you may wish to debrief the trial. Encourage all students to participate in the **discussion** of the trial.

Questions that might help discussion include:

- Q. What were the strong and weak points of each side?
- Q. What additional information would have been helpful?
- Q. Who was the most believable witness? Why?
- Q. Did any of the students change their minds during the trial? When and why?
- Q. Are there other ways that the problem could have been dealt with? What would have been the advantages or disadvantages?
- Q. Was the formal court language and procedure helpful? How could it be improved?
- Q. In some countries, a trial starts with opening speeches rather than just reading the indictment. Would opening speeches have been an improvement?
- Q. Do you think the accused should have been in custody or on bail prior to the trial? Why?
- Q. What, if anything, did you find confusing or hard to follow.

14. Please send some **feedback** to Sandy Wylie (see details on last page).

All comments and criticisms welcome. For example: -

1. What did you enjoy about the MiniTrial?
2. What did you learn from the MiniTrial?
3. What did you *not* enjoy about the MiniTrial?
4. What would you like to change about the MiniTrial?



# MiniTrial Starter Pack

## Chapter 2 - The Student Handout:

### MiniTrial Procedure

To run your MiniTrial : -

- decide who is to play which role - see the list of participants below,
- decide on a timetable for the various stages of the trial - see below,
- set out the classroom to resemble the approximate layout of a court - see the suggested layout below, and
- follow the MiniTrial instructions (below) - which contains the dialogue and the "stage" directions you will need.

You can highlight the text if you think it helps. The headings give you an over-view of the procedure - but can be left out of account if you wish.

### Participants

- **Sheriff** - the judge who sits on "the bench".
- **Accused** - the person accused of the crime by the Crown.
- **Prosecution** lawyer - the Procurator Fiscal Depute for the Crown.
- **Defence** lawyer - the Solicitor for the accused who may also instruct counsel (ask an Advocate or a senior QC to appear).
- **Clerk of Court** - who manages and administers the Court under the Sheriff's direction.
- **Court Officer** - who escorts the Sheriff and the witnesses - so that they are at the right place at the right time.
- **The Jury** (15 jurors) - who are balloted from members of the public.
- **Witnesses** - who are cited to attend court to give evidence.
- **Policeman** - who is on hand to escort the accused or deal with any trouble
- **Members of the Public** - who sit in the public gallery.
- **Reporters** / Media representatives - who can tell others what happened.



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ROLES - for MiniTrial	Date:	<i>Understudy or Assistant if required</i>
1. Sheriff		
2. Accused		
3. Prosecution lawyer(s)		
4. Defence lawyer(s)		
5. Clerk of Court		
6. Court Officer		
7. The Jury 1	2	3
4	5	6
7	8	9
10	11	12
13	14	15
8. Witnesses for Prosecution	1.	
	2.	
9. Witnesses for Defence	1.	
	2.	
10. Policeman		
11. Public / Reporters		



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<b>TIMETABLE for 60 minute Trial : Stage</b>	<b>Starting time</b>	<b>Time allowed</b>
1. Introduction and preliminary matters		10 minutes
2. Examination-in-chief of 1 <sup>st</sup> prosecution witness		3 minutes
3. Cross-examination		2 minutes
4. Examination-in-chief of 2 <sup>nd</sup> prosecution witness		3 minutes
5. Cross-examination		2 minutes
6. Examination-in-chief of 1 <sup>st</sup> defence witness		3 minutes
7. Cross-examination		2 minutes
8. Examination-in-chief of 2 <sup>nd</sup> defence witness		3 minutes
9. Cross-examination		2 minutes
10. Jury speech by prosecution		5 minutes
11. Jury speech by defence		5 minutes
12. Sheriff's charge		5 minutes
13. Jury retire and consider verdict		5 minutes
14. Jury announce verdict		1 minute
15. Plea-in- mitigation?		3 minutes
16. Sentence?		1 minute
17. Discussion		5 minutes



## Court Layout – using tables

(Chambers / Sheriff's room)

**SHERIFF**

(sits on the Bench – a separate table)

**CLERK OF COURT**

(sits at the head of the main table)

**O WITNESS**

(stands in the Witness Box – a separate seat)

OOO

OOO **JURORS**

OOO (sit in the Jury Box – rows of seats)

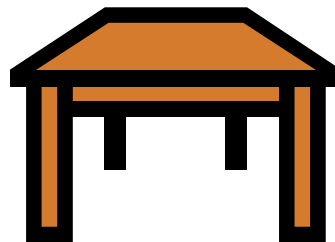
**OFFICER**

OOO

OOO

**COURT**

(sits near the main table)



**PROSECUTOR**

(sits at the main table)

**THE MAIN TABLE**

**DEFENCE**

(sit at the main table)

**THE ACCUSED**

(sits in the dock – in a separate seat)

**POLICEMAN**

(sits beside the accused)

**MEMBERS OF THE PUBLIC  
& REPORTERS**

(sit in the public gallery - room)

**WITNESSES - WAITING TO BE CALLED**

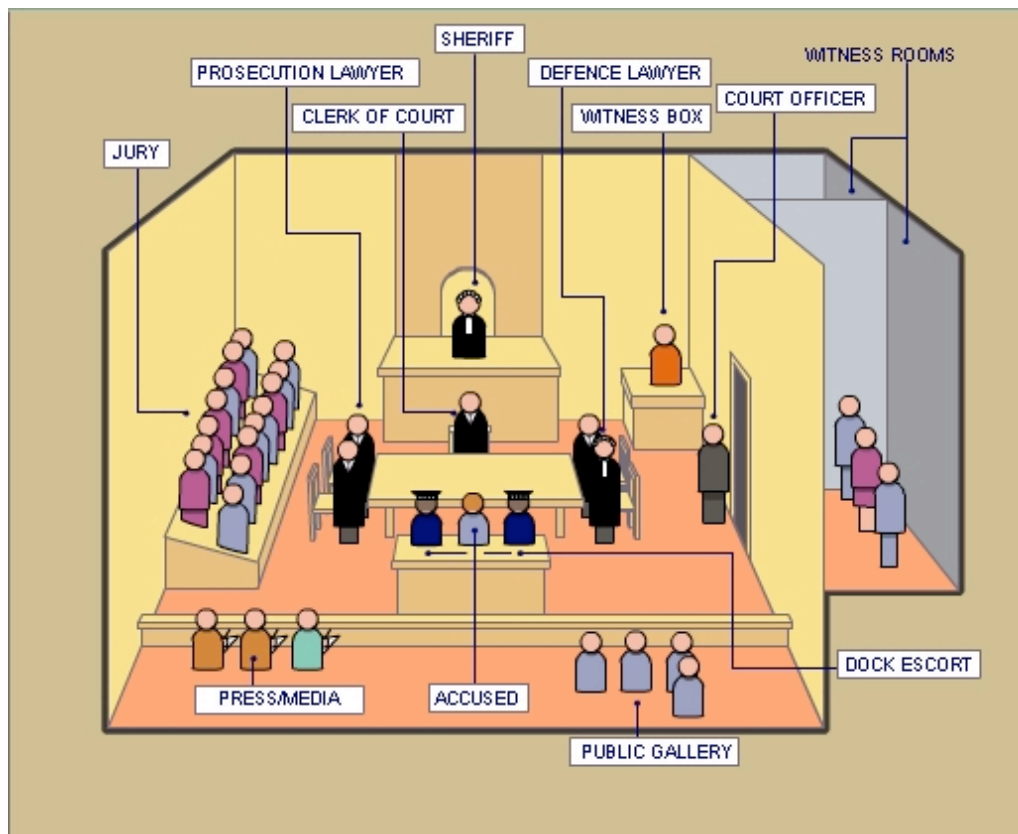
(wait in the witness rooms / room)



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[www.minitrial.org.uk](http://www.minitrial.org.uk)



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njd = [www.notjustdesign.co.uk](http://www.notjustdesign.co.uk)

**The MiniTrial website has an interactive courtroom scene.**



## Instructions for The Trial

### 1. The Court convenes / assembles - the Sheriff is brought on to the bench

The Court Officer collects the Sheriff from Chambers and enters court in front of the Sheriff and announces their arrival with the words (said loudly enough to be heard above any background noise):-

**"Court. All rise please."**

Everyone remains standing until the Sheriff is seated.

### 2. The Clerk of Court "calls the diet".

The **Clerk** of Court stands and asks the Sheriff

**"My Lord shall I call the diet".**

The **Sheriff** says

**"Yes please".**

The **Clerk** of Court then says

**"Call the diet. Her Majesty's Advocate against AB {the accused's name}. Are you AB?"**

The **accused** AB (who sits in the dock) says

**"Yes".**

### 3. The Accused's plea is tendered by his defence lawyer - "Not Guilty" in this case.

The **defence** solicitor or advocate stands and says

**"My Lord I appear for the accused who adheres to his plea of Not Guilty."**

### 4. The Clerk of Court ballots the Jury - chosen from those cited for jury service.





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The **Clerk** of Court says

**"Shall I empanel the Jury, My Lord?"**

The **Sheriff** says

**"Yes please."**

The **Clerk** of Court then simply asks those chosen to be jurors to take their place in the jury box

In MiniTrial there is no need to carry out the full procedure for empanelling a jury. That would involve the Clerk of Court saying to the potential jurors (sitting in the public benches)

**"When your name is called please come forward and take your place in the jury box which is on my right (or left)."**

Normally the Clerk would then call out the jurors' names one by one from pieces of paper taken out of a ballot jar/box and the process would continue until the jury is complete (normally 15 jurors) – but that is not necessary in MiniTrial.

In MiniTrial, there is no right to challenge the jurors selected.

### **5. The Clerk reads the indictment (charge) to the jurors**

The **Clerk** says

**"Shall I read the indictment, My Lord?"**

The **Sheriff** says

**"Yes please"**

The **Clerk** of Court then says

**"Ladies and Gentlemen of the jury the charge against the accused AB is that "** *and the Clerk then reads out the words from the indictment which is with the case papers (changing "you" to "he").*

### **6. The Clerk administers the oath to the Jury.**

The **Clerk** then administers the oath to the jury by saying to them:



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**"Ladies and Gentlemen of the Jury, please stand and raise your right hands. Do you swear that you will well and truly try the accused and return a true verdict according to the evidence? Please say "I do"".**

The **jurors** all reply

**"I do".**

### **7. The Sheriff outlines the procedure.**

The **Sheriff** can then briefly outline the procedure to the Jury - as follows:-

**"Ladies and Gentlemen of the Jury, you are about to hear the evidence in this case. Please listen carefully. You may take notes if you wish. At the end of the trial you will be asked to decide upon a verdict."**

(There are some MiniTrial "Jury Observation Sheets and Checklists" with the case papers if the Jurors wish to use them.)

### **8. The witnesses give evidence**

The **Sheriff** then invites the prosecution to begin by looking at the Procurator Fiscal and saying

**"Mr/Madam Fiscal who is your first witness?"**

The **prosecutor** simply calls the first witness by saying

**"My Lord my first witness is ... (name)"**

The witness is collected from the witness room/area and is shown into the witness box by the Court Officer.

Students can use MiniTrial to practice for what could be an important part of their "public speaking" - giving evidence.

It is **very** important that **ALL** the witnesses and the lawyers **STAND and SPEAK UP:-**

- **loudly**
- **clearly** and



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- **slowly.**

They should try to make sure that everyone in the whole Court- even those at the very back of the room - can

- **hear** what they say without difficulty,
- **remember** what they say and
- **write down** what they say - in notes.

It is important for the prosecutor to remember to ask the Crown witnesses whether they are able to identify the accused as a person they say they saw. That involves asking the witness to look round the court and if they see the person concerned to point him out. If they are able to do so that is sometimes called a “dock identification”. Many cases depend on identification evidence.

### 9. The Sheriff puts each witness on Oath - to tell the truth

All witnesses are sworn in before they begin answering questions. This is to remind them that they must tell the truth.

In MiniTrial the Sheriff can use a modified "oath" – using “I promise” instead of “I swear by Almighty God”

The **Sheriff** stands and raises his or her right hand and says:

**“Please raise your right hand and repeat after me. "I promise that I will tell the truth, the whole truth, and nothing but the truth."”**

### 10. The Crown case begins

The Crown case begins by the prosecutor asking the witness questions in "examination in chief" followed by cross-examination by the defence (and perhaps re-examination if you wish)

#### (i) Examination in Chief

The prosecution asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. If the witness is asked questions which are not included in the witness statements it is probably better for the witness to answer by saying “I don’t know” or “I can't remember” or “I'm not sure” or “It's possible”.



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If need be the Sheriff may remind students to **"Please keep your voice up"**.

**Ideas for questions:**

**What do you remember?**

**What happened next?**

**Who did you see?**

**Remember to ask questions that will let the witness tell the complete story. Try asking what are sometimes called "open questions" starting with words like: -**

**Who?**

**What?**

**Where?**

**When?**

**Why?**

**How?**

**Describe?**

### **(ii) Cross Examination**

The defence lawyer then questions the witness for the other side to try to show that the witness is lying or mistaken or can't remember. For example, the lawyer may ask "Isn't it true that you really couldn't see because it was almost dark outside?"

**Ideas for questions:**

**Isn't it true that.....**

**You said that ...**

**You told them that ...**

**You didn't really go ...**

**If possible, ask questions that call for a "yes" or "no" answer only**

### **(iii) Re-examination**

At this stage, the prosecutor may normally then ask a few questions (if he or she wishes) to clear up or correct any matters that arose during cross examination. In a MiniTrial it might be best to say to start with that there will be no re-examination - until the students are more familiar with the process.

### **Crown case - MiniTrial sequence**



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Remember the normal sequence of events in MiniTrial is: -

**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

### 11. The Crown Case Closes and the Defence case begins

After all the prosecution witnesses have been questioned and cross-examined (and re-examined if necessary), the **prosecutor** checks whether there are any other matters to be dealt with by the Crown.

In some case there is a Joint Minute of Agreement. In that event the prosecutor will say:-

**"My Lord, there is also a Joint Minute of Agreement in this case and with your Lordship's leave I propose to read it to the Ladies and Gentlemen of the Jury."**

If the defence agree, the Sheriff will allow that to be done. The Sheriff will also explain briefly to the jury that certain matters have been agreed between the prosecution and the defence, which saves time and inconvenience to witnesses, and that a document called a Joint Minute is about to be read to them setting out the facts which are deemed to have been formally proved. The prosecutor will then go over and stand in front of the jury box and read the Joint Minute aloud to the jury.

Once the prosecutor is satisfied that there are no other matters to be dealt with by the Crown, the prosecutor will say:-

**"My Lord I close the Crown case".**

For the purposes of MiniTrial - it will be assumed that there *is* a case to answer and the case proceeds.

The defence may then call its witnesses (starting with the accused if he is to give evidence) and questions them in examination in chief. Then the prosecutor cross-examines (and the defence may re-examine) all along the same lines outlined above.

### Defence case - MiniTrial sequence



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Remember the normal sequence of events in MiniTrial is: -

**The accused** - "**examination-in-chief**" by the Defence

The accused - "**cross examination**" by the Crown

**Witness 2** for the Defence - examination in **chief** by the Defence.

Witness 2 - **cross**-examination by the Crown.

Once all the evidence has been heard the **defence** say

**"My Lord that closes the case for the defence".**

It is time for the "Speeches to the Jury".

### **12. The Crown Speech to the Jury - seeking conviction**

The prosecutor addresses the jury first, then the defence.

Each side summarises the evidence presented during the questioning in a way that supports their case.

In a criminal case, assuming there is sufficient evidence, the prosecution asks the jury to find the accused "guilty".

The speech must be based on the facts which were given in evidence in court.

If students need one, there is a draft outline of a Crown Speech with the case papers in **Chapter 3** below.

### **13. The Defence Speech to the Jury - seeking acquittal**

Assuming that an accused adheres to his plea of "not guilty" the defence asks the jury to acquit the accused by finding him/her "not guilty" or by finding the charge "not proven".

The speech must be based on the facts which were given in evidence in court.

If students need one, there is a draft outline of a Defence Speech with the case papers in **Chapter 3** below.



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### 14. The Sheriff's Charge to the Jury - giving them directions in law

After the Jury Speeches are finished, the Sheriff "charges the jury" i.e. gives them directions as to the law which they must apply.

The Sheriff will find the terms of a "charge" (much simplified) in the case papers concerned. See **Chapter 3** below.

### 15. The Jury Retire - to consider their verdict

The jurors retire to consider their verdict - which can be guilty or not guilty or not proven (in a criminal case).

Depending on the space available the jury can go to another room, or the corridor, or simply sit where they are to discuss things.

Once the Jurors have retired to consider their verdict, the **Court Officer** says

**"Court rise"**

and escorts the Sheriff back to his or her chambers / other part of the room.

### 16. The Verdict

When the jury have reached their verdict they let the Clerk of know that they are ready to announce it.

The **Court Officer** brings the Sheriff back on to the bench - saying

**"Court rise".**

The Jurors return to Court.

The **Clerk** of Court then ask

**"Ladies and Gentlemen of the Jury - who speaks for you?"**

The appointed **spokesperson** for the jury says

**"I do".**



## MiniTrial Starter Pack – East Ayrshire 2006

The **Clerk** of Court then says

**"What is your verdict on the charge against the accused"?**

Depending on what the jury decided, the **spokesperson** says

**"Guilty"** or  
**"Not guilty"** or  
**"Not Proven"**

The **Clerk** then asks

**"Was your decision unanimous or by majority".**

The **spokesperson** says as appropriate

**"Unanimous"** or  
**"By majority"**

The **Clerk** of Court records the verdict in writing and then reads it back to the jury asking them

**"Ladies and Gentlemen - is that a correct record of your verdict"?**

The jurors indicate whether it is a correct record of their verdict.

### **(i) If the accused is acquitted**

If the accused is acquitted - the **Sheriff** says

**"AB, you are free to go."**

### **(i) If the verdict is "guilty"**

If the accused is found guilty the prosecutor normally says

**"I move for sentence"**

and then tells the court whether the accused has any previous convictions and whether and for how long he has been in custody prior to trial.

## **17. Plea in Mitigation and Sentence**

If the verdict is "guilty" the Sheriff then listens to what the defence has to say on the accused's behalf in mitigation of sentence.





## MiniTrial Starter Pack – East Ayrshire 2006

The Sheriff then sentences the accused in the way he/she considers most appropriate.

Depending on the circumstances the Sheriff's options might include: -

- imprisonment (or detention if under 21),
- community service,
- probation,
- deferred sentence,
- a fine,
- a compensation order,
- an admonition, or
- an absolute discharge.

The Sheriff may say

**"I am going to call for a Social Enquiry Report and a Community Service Assessment. The case will be adjourned for three weeks."**

The Sheriff may then discharge the jurors saying:

**"Ladies and gentlemen of the jury I can now discharge you from further attendance as jurors in this case. Thank you for performing an important public duty."**

### **18. The End.**

That is the end of your MiniTrial.

**Well done to all.**

Take a moment to ask the students: -

How could the trial system be made better?

What worked well - and what didn't?

### **19. Feedback Please.**

Please ask your teacher to send your thoughts about MiniTrial to Sandy Wylie (see details on last page).



## MiniTrial Starter Pack – East Ayrshire 2006

All comments and criticisms welcome.

For example: -

1. What did you enjoy about the MiniTrial?
2. What did you learn from the MiniTrial?
3. What did you *not* enjoy about the MiniTrial?
4. What would you like to change about the MiniTrial?



# MiniTrial Starter Pack

## Chapter 3 - MiniTrial Case Papers

This Chapter contains two sets of MiniTrial Case Papers for use in conducting your MiniTrials.

The two cases concern :-

- dangerous driving, and
- possession of drugs with intent to supply.

The papers for each case include: -

1. **The Facts** - a brief summary
2. **The Indictment** - the charge against the accused,
3. **The Law** - a very brief summary of the relevant principles,
4. **Precognitions** (witness statements) for the prosecution witnesses,
5. **Precognitions** for the defence witnesses,
6. **Summary sequence of events and Additional Materials**
7. **The Crown Speech to the Jury** - a possible outline
8. **The Defence Speech to the Jury** - a possible outline
9. **The Charge** - a style which the Sheriff can use for the Charge to the Jury,
10. **Jury Observation Sheets** - for the jurors to use if they wish.



## **CASE No. 1 – Dangerous Driving**

**HER MAJESTY'S ADVOCATE**

**v.**

**LEE (*or LEEANNE*) DAVIDSON**

### **1. The Facts - a brief summary**

#### **FACTS**

On Tuesday 7 June 2005 a motor car crashed through a fence, travelled down a railway embankment and landed on the railway line from Kilmarnock to Glasgow.

Lee Davidson has been charged with charged with a contravention of Section 2 of the Road Traffic Act 1988, section 2 - dangerous driving.

Will the Crown prove guilt beyond reasonable doubt?



## 2. The Indictment - the charge

The indictment is in the followings terms: -

**HER MAJESTY'S ADVOCATE**

**v.**

**LEE (*or LEEANNE*) DAVIDSON**

LEE (*or LEEANNE*) DAVIDSON, born 1 April 1988, residing at 22 Beech Drive, Kilmarnock,

You are indicted at the instance of the Right Honourable Ronnie Murphy Queen's Counsel, Her Majesty's Advocate, and the charge against you is that

On 7 June 2005 on a road or other public place, namely the car park at Aldo's Superstore, Oldtown Road, Kilmarnock, you LEE (*or LEEANNE*) DAVIDSON did drive a mechanically propelled vehicle, namely motor car registered SF47 UFO, dangerously whereby you drove at excessive speed and lost control of the said vehicle, causing same to crash through a fence, travel down a railway embankment and land on the Kilmarnock to Glasgow railway line to the danger of you and of Jock (*or Jacqui*) Thompson, a passenger in said vehicle and to the danger of persons travelling on the said railway;

CONTRARY to the Road Traffic Act 1988, Section 2 as amended



### 3. The Law - a summary

You will find **the main legal concepts** outlined in the draft Sheriff's charge and in the draft speeches to the jury - which are with your case papers (below). Please read them to help you prepare.

Lee/Leeanne Davidson has been charged with a crime in terms of Section 2 of the Road Traffic Act 1988, as amended; that is, a charge of dangerous driving. What Section 2 of the Act says is this:

“A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.”

Driving is dangerous when it falls far below the standard expected of a careful and competent driver and where it would be obvious to a careful and competent driver that driving in that way would be dangerous. The word “dangerous” here refers to danger either of injury to any person or of serious damage to property. You should have regard to any circumstances which the driver could be expected to be aware of, and of any circumstances shown to have been within the knowledge of the accused. The driver's actions need not actually have caused an accident of any sort, but they must be dangerous in the sense that I have just described. You must judge the accused's conduct objectively, using your own common sense.

Section 24 of the Road Traffic Act says that when someone has been charged under Section 2 of the Act it is open to you to bring in an alternative verdict of guilty of careless driving in terms of Section 3 of the Act. Section 3 says this:

“If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention or without reasonable consideration for other persons using the road or place, he is guilty of an offence.”

The words “without due care and attention” and “without reasonable consideration” for other road users have their ordinary meanings. Careless driving can be the result of momentary inattention; dangerous driving cannot.

When the law speaks of injury to any person, that includes any passenger in the accused's car; similarly when mention is made of other people using the road or place, that too includes any passengers in the accused's vehicle. I direct you that the car park at Aldo's Superstore is a “road or other public place” within the meaning of the Act.



## 4. Statements - Prosecution witnesses

### Prosecution Witnesses

1. William “Billy” (or *Wilma*) Boyle
2. Bertie (or *Brenda*) Auld



## MiniTrial Starter Pack – East Ayrshire 2006

### **STATEMENT OF WILLIAM “BILLY” (or WILMA) BOYLE** **(Crown Witness No. 1)**

My name is Billy/Wilma Boyle and I am a delivery driver for Aldo's Superstores which is the well-known grocery company. I am 38 and I have been a goods driver for 17 years. I got my HGV licence when I was 23.

Aldo's has a Superstore in the industrial estate at Oldtown Road on the outskirts of Kilmarnock. I usually drop off a container load of things there on a Tuesday evening after the store has closed to the public. I think that one shuts at 6 o'clock on a Tuesday.

On Tuesday 7 June 2005 I was driving a ten tonner loaded with frozen food. I must've arrived near Aldo's sometime around the back of eight. To drop off at that store you have to drive in the main entrance to the car park at the Superstore but then you have to go to the loading bay which is right round at the back of the store.

A lot of the local lads with cars – or kids driving their Mum or Dad's cars, I should say – head up there on a Tuesday because they know the shop shuts early and the car park is deserted after about half six. They do joyriding stuff, stunts like handbrake turns and that, showing off to each other. Some of them drive like dafties, far too fast for inside a car park.

As I was approaching the top corner of the Superstore to turn right to go into the side where the loading bay area is a wee blue Ford Ka came flying round the corner towards me. There were two youngsters in the front, and I don't think either of them even had a seatbelt on. I hit the brakes but the Ford swerved off to my left and went straight through the wooden fence at the edge of the car park. It just missed me. I didn't see it after that because I was concentrating on bringing my own vehicle to a halt. I got out and ran back up to the gap in the fence made by the car. I could see that it had stopped at the bottom of the embankment slope and it was sitting on the railway line. That bit is part of the main line to Glasgow.

Just then the manager of Aldo's, Bertie/Brenda Auld came running up. He/she had seen the accident out of his/her office window. We set off down to the car together to see if anybody was hurt, but then we saw the two youngsters getting out and coming up the slope towards us. Bertie/Brenda Auld called the police on a mobile and then called the town railway station to tell them about the car on the line.

I could identify the two youngsters from the Ford again.





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### **STATEMENT OF BERTIE (or BRENDA) AULD (Crown Witness No. 2)**

My name is Bertie/Brenda Auld. I am 47 years old and I have been the manager of Aldo's Superstore in Oldtown Road, Kilmarnock since it opened seven years ago. Before that I was the assistant manager of the store in Oldtown. The Superstore closes to the public at 6 pm every Tuesday and that is the night when we take in most of our weekly deliveries of frozen goods. These are unloaded in the bay at the rear of the store. We have a frozen storage facility on site because we are a Superstore.

My office is situated to the rear of the Superstore on the side which faces the railway line. It is on the first floor and I have a good view over that side of the car park to the railway line. There is a little wooden fence with spaces between the planks on that side which separates our car park from the spare ground between us and the railway line.

In the summer we have a bit of a problem with young joy riders who carry on in the car park after the store has closed. Other youngsters in cars drive in and park up to hang out together as well. I have had to move them on sometimes so that there is enough space for the delivery vehicles to get in and swing round in the car park. I have never actually called the police about any of this in the past.

One Tuesday evening (7 June 2005) I was doing some paperwork in my office. It must have been about \_ to \_ past eight when I was disturbed by the noise of a car engine revving very loudly in the car park below my window. I realised it must have been some youngsters joyriding again and I went to the window. I saw one of our refrigerated delivery lorries stopped at the side of the Superstore but the main thing which caught my eye was a little blue car which was at top of the slope leading from the side of the Superstore down to the railway line. There was a hole in the fence and I think that bits of the fence were falling off the car when I first looked. It bumped all the way down and stopped right in the railway line. This is the main line from Kilmarnock to Glasgow. If a train had come along just then anyone in the car would have been killed and there could have been a terrible accident. People on the train could have died, too. I was shocked.

I called the police right away from the phone on my desk, then I went straight out to the scene by the quickest way, which is by going down the fire escape stairs. When I got to the gap in the fence one of our delivery boys/girls, Billy/Wilma Boyle was there. It must have been his/her truck that was stopped at the side of the Superstore. We saw two youths getting out of the car which seemed to be stuck on the railway line. They started to come towards us.

Then I remembered that a train usually comes along at about ten to nine each evening. I often see it when I am working late. So I called Kilmarnock station on my mobile to warn them that there was an obstruction on the line. Just as I was doing that the police arrived in the car park behind me. Later they arranged for the car to be towed off the railway line. When the people from the car got up to us the police took them away to speak to them.



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## **5. Statements - Defence witnesses**

### **Defence Witnesses**

1. Lee (*or Leanne*) Davidson, the accused
2. Jock (*or Jacqui*) Thompson



## MiniTrial Starter Pack – East Ayrshire 2006

### **STATEMENT OF LEE (or LEEANNE) DAVIDSON (the Accused)**

My full name is Lee/Leeanne Davidson and I live at 22 Beech Drive in Kilmarnock. I am 18 years of age and I am studying business studies at the local Technical College.

I passed my driving test a month before all this happened and I was allowed to use my Aunt Liz's car which is a Ford Ka. On a Tuesday evening (7 June 2005) I was having a shot of the car and I had taken my friend Jock/Jacqui Thompson to MacDonald's where we got a drive-through meal. We drove on to the car park at Aldo's Superstore in Oldtown Road because usually at that time of day there is nobody still shopping and quite often some of our friends drive up and meet there.

That night there was nobody there so we just ate our food together and had a chat and a bit of a laugh.

Sometime around half past eight I started the car up to drive away. As I was coming round the far end of Aldo's, a great big delivery truck was coming the other way pretty fast. I turned to my right to give him more room and I was going to touch the brakes to slow down some more, though I wasn't going very fast in the first place, not more than about 10 or 15 miles an hour. My Aunt Liz's car is an automatic and I'm not very used to driving one like that because my Dad's car has a manual gearbox. I think I must have pressed the accelerator instead of the brake because the car shot off to the right and went straight through the wee wooden fence thing at that side of the car park. I was trying to stop but the car wouldn't respond properly. Jock/Jacqui and I bumped down the embankment on the other side and I managed to stop the car at the bottom. By then we were sitting on the railway line. I could not get the car to start again. By the time we climbed back up to the car park at Aldo's the police were there.

I had to phone my Aunt and the police arranged for the car to be towed off the railway line and pulled back up to the car park. I got real pelters from my Mum and Dad and from Aunt Liz.

About a week later I got a letter from the railway company to say that they were going to sue me for £16,000 because of the trouble they had had on account of having to stop the trains. I have not got that kind of money.

Both Jock/Jacqui and I had put our seatbelts on before I drove off. If we hadn't we could have been really hurt when the car ran down the slope.



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### **STATEMENT OF JOCK/JACQUI THOMPSON (Defence Witness)**

I am Jock/Jacqui Thompson and I live at 35 Sandy Lane in Kilmarnock. I am 19 years old and I am a second year philosophy student at St Andrews University. I used to go to Ayr Academy and I was very friendly with Lee/Leanne Davidson when we were both there. We all call him/her “Dodger” Davidson because he/she used to dodge off football/hockey at school every week.

Last June I was home for the holidays and I had a summer job with the local cleansing department. One evening last June, I think it was a Tuesday or Wednesday, I went out for a drive with Dodger in his/her auntie’s car, which is a wee blue Ford. I don’t know the model or the registration. We got a drive-thru meal in MacDonald’s and went to the car park at Aldo’s to eat it. We went there because loads of people we know hang out up there in the summer holidays after the place has shut for the day.

On that particular day no one we really knew had arrived yet so we drove round the back of Aldo’s and ate our burgers. We were listening to music on the CD player and catching up with each other. Maybe about half-eight or quarter-to-nine kind of time we had finished eating and we decided to go back to the centre of town to see who was about. Dodger was driving and I was in the passenger seat.

Just before we moved off another car came flying round the Superstore into the bay area where we were parked. It was a blue Renault Clio, some kind of souped-up one, with tinted windows. I knew the guy driving it from school. He is called Alan Turnbull. To be honest, most people think he is bad news. He revved his car up and did some kind of fancy spin round, so that he was facing back the way he had come. He then shot off again, round the corner to go back to the front of the store.

We drove slowly round after him. We got to the bit at the side of the Superstore with the railway line to our right hand side. There was a big delivery truck in Aldo’s colours coming towards us. I could see Turnbull’s car too; he was revving it up and he whizzed towards the truck then swerved to pass it on the railway line side. We followed more slowly but as Dodger turned the car to pass by the truck we accelerated suddenly without any warning. I heard Dodger shout something. Next thing I knew we were crashing through the daft wee fence there is there and we had landed on the railway line. It all happened dead fast. Dodger couldn’t get the car to start up again or to move at all. By that time I was getting a bit up tight in case a train came along so I was shouting at Dodger to get out the car.

We both got out and went up the embankment to the car park to get help. Dodger had left his/her mobile in the car in the panic. I had mine in my pocket but the battery was flat. When we got up to the fence again the manager guy from the Superstore was there. He was doing his nut. The police were there, too. We went with them to a police car and I told them what had happened.



## MiniTrial Starter Pack – East Ayrshire 2006

I do not know why the car went out of control. Dodger did not do anything mad. He/she is not that kind of person. It was just an accident though it was a bit scary at the time.



## MiniTrial Starter Pack – East Ayrshire 2006

### UNDER THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995

#### **JOINT MINUTE OF AGREEMENT**

in the case of

HER MAJESTY'S ADVOCATE

Against

LEE/LEEANNE DAVIDSON

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The Procurator Fiscal for the Crown and Counsel for the Defence concur in stating to the Court that the following facts are agreed and should be admitted in evidence:

1. That the owner and registered keeper of Ford motor vehicle SF47 UFO is Elizabeth Davidson, 92 Skye Avenue, Kilmarnock, who is the aunt of the accused.
2. That on 7 June 2005 PC Ronald Simpson of Strathclyde Police Traffic Department attended at the scene of the incident. PC Simpson is a qualified vehicle examiner. He examined said Ford motor vehicle SF47 UFO and found that its brakes and steering were in perfect working order. He found no mechanical defect in the vehicle which would have caused a loss of control. Crown Production Number 2 is his Report and is true and accurate in its terms.
3. That Crown Production Number 1 is a sketch of the locus prepared by PC Simpson on 7 June 2005.
4. That as a result of the presence of the said motor vehicle on the main railway line from Kilmarnock to Glasgow all rail services due to leave Kilmarnock Station on 7 June 2005 had to be cancelled between 2040 hours and 2230 hours, by which time the said vehicle had been removed from the line. In consequence thereof Scotrains plc, the service operators, became liable to pay compensation to passengers in the sum of £16,000. The said company has raised a civil action in the Sheriff Court seeking to recover the said sum from Lee/Leanne Davidson.

IN RESPECT WHEREOF

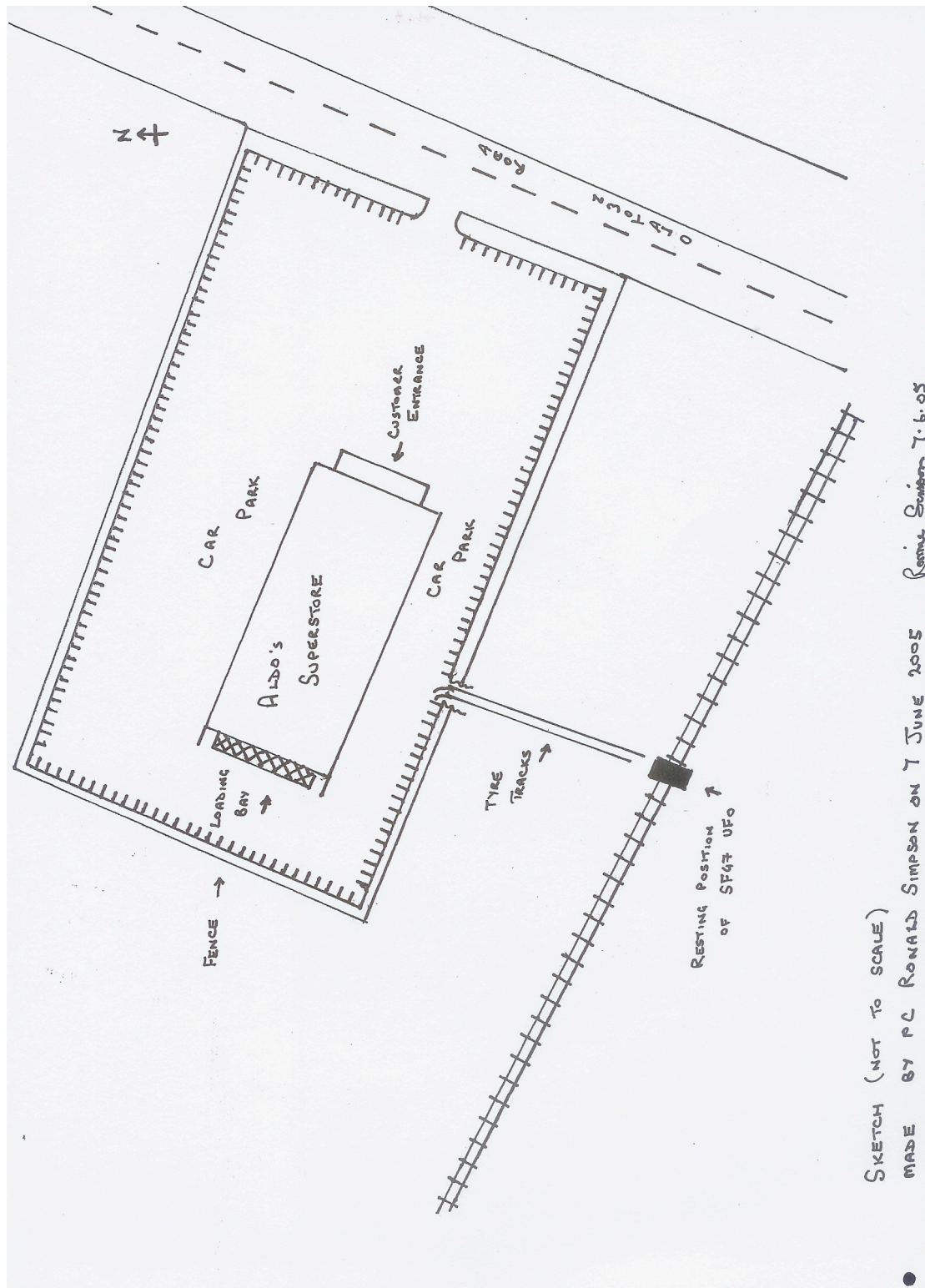
Procurator Fiscal

Counsel for the Accused





**SKETCH**  
prepared by PC Simpson on 7 June 2005







## MiniTrial Starter Pack – East Ayrshire 2006

### CROWN PRODUCTION No. 2

#### STRATHCLYDE POLICE TRAFFIC UNIT

#### **VEHICLE EXAMINER'S REPORT**

prepared by  
**PC RONALD SIMPSON**

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#### **1. Qualifications and Experience**

I have been a member of the Strathclyde Police Traffic Unit since 2000. I am a qualified vehicle examiner, holding a Diploma in Vehicle Mechanics and Examination from Robert Gordon's University in Aberdeen. I have also hold a Certificate in Crash Scene Investigation awarded by the Scottish Police College at Tulliallan.

#### **2. Background**

On the evening of 7 June 2005 I was telephoned at home at about 2100 and asked to attend at the scene of a road traffic incident at Aldo's Superstore in Oldtown Road, Kilmarnock. I arrived at the locus at about 2115 hours.

#### **3. Examination**

On arrival I observed a very obvious hole in the wooden fencing at the north western side of the car park at the Superstore. There were tyre marks in the grass leading from the damaged part of the fence down the embankment to the railway line below, which is the main line from Kilmarnock to Glasgow. At the foot of the embankment there was a blue Ford Ka motor vehicle registration number SF47 UFO lying on the railway line itself. The vehicle was unoccupied. I prepared a sketch of the scene showing the vehicle in its resting position on the railway line. A salvage crew from Bain's Garage in Kilmarnock attended at about 2130 hours and they removed the vehicle from the railway line and placed it on to a specialist vehicle trailer.

I was then able to conduct a detailed examination of the Ford motor vehicle. I found it to be well-maintained and in excellent working order. The brakes attached to both front and rear wheels were operating correctly, as was the handbrake. The steering was in good order, with a full range of movement to left and right. No non-standard modifications had been made to the vehicle.

#### **4. Conclusions**

I found the vehicle to be in excellent working order throughout. I did not detect any mechanical defect in the vehicle which would have caused loss of control.

Ronald Simpson PC 117

Strathclyde Police Traffic Unit

9 June 2005



### 6. 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
11. **The Defence Case** is presented as follows:  
  
    **The accused** - "**examination-in-chief**" by the Defence  
    The accused - "**cross examination**" by the Crown  
  
    **Witness 2** for the Defence - examination in **chief** by the Defence.  
    Witness 2 - **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**
18. **The End - Feedback please.**



## 7. The 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.

The Crown say **there is no reasonable doubt that the accused Lee (or Leeanne) Davidson is guilty of the offence set out in the indictment.**

On the evidence, the factors pointing to the guilt of **Lee (or Leeanne) Davidson's** are as follows: -

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

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

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



## 8. The 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 – **Lee (or Leeanne) Davidson**. 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 guilt, then you must acquit.

In this case, the Crown has failed to prove it's case.

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 **Lee (or Leeanne) Davidson** is entitled to the benefit of that doubt.

**Lee (or Leeanne) Davidson** should be acquitted - and I invite you to return a verdict of "**not guilty**".



## 9. The Charge

### SHERIFF'S CHARGE TO THE JURY - a possible outline

**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. Please consider the evidence with care. It is your recollection and your assessment of the evidence that counts - and 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 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.

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 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.

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

However, I would like to say a few words about the **LAW**.

Lee/Leanne Davidson has been charged with a crime in terms of Section 2 of the Road



## MiniTrial Starter Pack – East Ayrshire 2006

Traffic Act 1988, as amended; that is, a charge of dangerous driving. What Section 2 of the Act says is this:

“A person who drives a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.”

Driving is dangerous when it falls far below the standard expected of a careful and competent driver and where it would be obvious to a careful and competent driver that driving in that way would be dangerous. The word “dangerous” here refers to danger either of injury to any person or of serious damage to property. You should have regard to any circumstances which the driver could be expected to be aware of, and of any circumstances shown to have been within the knowledge of the accused. The driver’s actions need not actually have caused an accident of any sort, but they must be dangerous in the sense that I have just described. You must judge the accused’s conduct objectively, using your own common sense.

Section 24 of the Road Traffic Act says that when someone has been charged under Section 2 of the Act it is open to you to bring in an alternative verdict of guilty of careless driving in terms of Section 3 of the Act. Section 3 says this:

“If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention or without reasonable consideration for other persons using the road or place, he is guilty of an offence.”

The words “without due care and attention” and “without reasonable consideration” for other road users have their ordinary meanings. Careless driving can be the result of momentary inattention; dangerous driving cannot.

When the law speaks of injury to any person, that includes any passenger in the accused’s car; similarly when mention is made of other people using the road or place, that too includes any passengers in the accused’s vehicle. I direct you that the car park at Aldo’s Superstore is a “road or other public place” within the meaning of the Act.

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 explained at the outset.

**THERE ARE THREE VERDICTS 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.

In this case, if you decide upon a verdict of guilty, that could be guilty of dangerous driving or of careless driving; but in either case, there must be at least eight of you in favour of the verdict which you decide upon.



## MiniTrial Starter Pack – East Ayrshire 2006

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.



## 10. Jury Observation Sheets - for the jurors.

### (a) JURY OBSERVATIONS on the PROSECUTION Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

**FACTS** established by the evidence of the prosecution witnesses  
and any doubts raised.

**Witness Number 1**

---

**Witness Number 2**

---

### CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree  
A = Agree  
D = Disagree  
SD = Strongly Disagree

**Witness 1** was a believable and reliable witness                      SA      A      D      SD

**Witness 2** was a believable and reliable witness                      SA      A      D      SD

Why did you reach those conclusions?

### Prosecution's Closing Speech:

How did the prosecution use the evidence to prove its case?





## MiniTrial Starter Pack – East Ayrshire 2006

### (b) JURY OBSERVATIONS on the DEFENCE Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

**FACTS** established by the evidence of the defence witnesses  
and any doubts raised.

**Witness Number 1**

---

**Witness Number 2**

---

### CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA	=	Strongly Agree
A	=	Agree
D	=	Disagree
SD	=	Strongly Disagree

<b>Witness 1</b> was a believable and reliable witness	SA	A	D	SD
--	----	---	---	----

<b>Witness 2</b> was a believable and reliable witness	SA	A	D	SD
--	----	---	---	----

Why did you reach those conclusions?

### Defence Speech to the Jury:

How did the defence use the evidence to raise a reasonable doubt?



## **CASE No. 2 – Possession with intent to supply**

**HER MAJESTY'S ADVOCATE**

**v.**

**JAMES (*or JANE*) WOOD**

### **1. The Facts - a brief summary**

#### **FACTS**

On Saturday 15<sup>th</sup> June, outside the “Antarctic Club”, two plain clothes police officers saw the accused, James Wood, approach a parked car. The car was being driven by a well know drugs dealer. The accused appeared to give the driver something and the driver gave the accused a small package. The car then drove off quickly.

The accused was cautioned and lawfully searched by the police. In his jacket the police found a number of Ecstasy tablets. Mr Wood has been charged with possession with intent to supply.

Will the Crown establish guilt?



## 2. The Indictment - the charge

The indictment is in the followings terms: -

**HER MAJESTY'S ADVOCATE**

**v.**

**JAMES (*or JANE*) WOOD**

JAMES WOOD, 26 Beech Avenue, you are indicted at the Instance of Her Majesty's Advocate and the charge against you is that:

On 15<sup>th</sup> June in Portland Road, Kilmarnock, you did have in your possession a controlled drug, namely the drug commonly known as “Ecstasy”, being a Class A drug specified in paragraph 1 (c) of Part 1 of Schedule 2 to the Misuse of Drugs Act 1971, with intent to supply it to another in contravention of section 4(1) of said Act; contrary to the Misuse of Drugs Act 1971, section 5 (3).



### 3. The Law - a summary

You will find **the main legal concepts** outlined in the draft Sheriff's charge to the jury and in the draft speeches which are with your case papers (below).

Please read those speeches and the Sheriff's charge to help you prepare.

This case concerns the Misuse of Drugs Act 1971.

There is no doubt that the accused physically had in his pocket the controlled Class A drug commonly known as "Ecstasy".

The **main questions** are:-

- (1) whether the Crown has proved beyond reasonable doubt that the accused was in "possession" of the controlled drug within the meaning of the Misuse of Drugs Act 1971, and
- (2) whether the accused can be found guilty of the much more serious offence of possession "with intent to supply" – as opposed to simple possession.

See the Sheriff's charge for further details.

The most serious cases are prosecuted "on indictment" and are heard before a jury. On indictment:-

- Simple "possession" of a Class A drug carries a maximum penalty of 7 years or an unlimited fine or both, and
- Possession of a Class A drug "with intent to supply" has a maximum penalty of life or an unlimited fine or both.

Less serious cases can be prosecuted on summary complaint and are dealt with by a judge without a jury. On summary complaint the maximum penalties for such drugs offences are 12 months or £5,000 or both.



## 4. Precognitions - prosecution witnesses

### Prosecution Witnesses

1. D.S. Joan (*or James*) Galloway
2. D.C. Patrick (*or Patricia*) Yuille

#### Crown witness No 1

**Joan (*or James*) Galloway**  
**Detective Sergeant with Local Police**  
**Aged 37 – with 18 years police service.**

On Saturday 15<sup>th</sup> June, I was on duty in plain clothes on mobile patrol with my colleague D. C. Patrick Yuille.

We were in an unmarked police car parked directly opposite the “Antarctic Club” in Portland Road, Kilmarnock. I was in the driving seat facing west. The street was well lit

At about 9.30 pm a black BMW 7 Series car stopped on the other side of the road directly in front of the Antarctic Club. It was facing east. The driver of the BMW was a well known drugs dealer. As soon as the car stopped I saw a youth I now know to be James Wood come out of the club doorway. He was looking furtively up and down the street and then walked very briskly over to the passenger window of the car. After short conversation I saw Mr Wood give the driver what appeared to a bundle of pound notes. In exchange the driver gave the accused a package – and then drove off quickly.

We lawfully detained and searched Mr Wood. In his left jacket pocket I found the package. It was a clear polythene bag containing a large number of tablets. The bag and tablets are Crown Label Production No 1. The tablets were subsequently examined at the forensic laboratory and were found to be methylenedioxymethylamphetamine (MDMA) - the controlled Class A drug commonly known as Ecstasy. The forensic report (*which has been agreed by the defence in a Joint Minute of Admissions*) is Crown Production No. 2. We counted the tablets. There were 60 of them in total. They were white tablets with a dollar sign design stamped on them.

In Mr Wood’s trouser pockets I also found a handwritten list of names and numbers. There were 11 names in total. Against 9 names was written the number “6”. Against the remaining 2 names was written the number “2”. The list is Crown Production No. 3. Mr Wood had no money on him.



## MiniTrial Starter Pack – East Ayrshire 2006

In reply to caution and charge, the accused said:-

*“Come off it. It’s only a few dollars. The guy in the BMW shouted me over and said could I give this wee envelope to the bouncer. Anyway, you can’t do me for supply. I am no dealer. I was just going to pass the sweeties on – and I wouldn’t have made a penny.”*

I have noted his reply in my notebook. Mr Wood said nothing about mints or breath-fresheners.

I have considerable experience of drugs related offences. I have been involved in many drugs cases and I have attended many drugs training sessions as part of my police duties.

The Ecstasy tablets with a dollar sign stamped on them are often referred to on the street as “dollars”. Ecstasy tablets are sometimes referred as “sweeties”.

The effects of Ecstasy can be unpredictable. There have been a number of deaths related to the abuse of MDMA.

The number of tablets found in the possession of Mr Wood clearly indicates his intention to supply tablets to others. There were too many tablets for his own personal use. They were also wrapped in pairs in clingfilm – for supply.

He also had what looked to me like a “tick list” of the people he was going to supply to. The tablets had a street value of about £900.

It was quite clear to me that the driver of the BMW did not shout Mr Wood over to him. Mr Wood spoke first.

I never saw anyone else with Mr Wood – but there might have been someone else in the doorway.

I can identify the person I have been referring to as James Wood. He is sitting over there (points to the accused James Wood).



## MiniTrial Starter Pack – East Ayrshire 2006

### Crown witness No. 2.

**Patrick (or Patricia) Yuille**  
**Detective Constable with Local Police**  
**Aged 23 – with 3 years police service.**

On Saturday 15<sup>th</sup> June, I was on duty in plain clothes on mobile patrol with my colleague D. S. Joan Galloway.

We were in an unmarked police car. We parked directly opposite the “Antarctic Club” in Portland Road, Kilmarnock. I was in the front passenger seat. Our car was facing west. The street was well lit.

At about 9.30 pm I saw a dark blue BMW 7 Series car drawing to a halt directly opposite us on the other side of the road in front of the Antarctic Club. It was heading east. The driver of the BMW was a well known drugs dealer.

I then saw a youth I now know to be James Wood come out of the club doorway. As soon as he saw the BMW he started walking quickly towards it.

He was looking uneasy – and was glancing from side to side.

Mr Wood spoke first. He said something to the driver through the passenger window.

I saw him hand something to the driver. I could not see what it was.

The driver gave Mr Wood a package – and then drove off quickly.

Mr Wood mouthed “Thanks” and waved to the driver as he left.

We lawfully detained and searched Mr Wood. I saw D. S. Galloway recover the package from Mr Wood's right jacket pocket. It was a clear polythene bag. I could easily see that it contained a large number of tablets. The bag and tablets are Crown Label Production No 1. The tablets were later examined at the forensic laboratory and were found to methylenedioxymethylamphetamine (MDMA) - the controlled Class A drug commonly known as Ecstasy. The forensic report (*which has been agreed by the defence in a Joint Minute of Admissions*) is Crown Production No. 2.

We counted the tablets. There were 60 of them in total. They were white tablets with a dollar sign design stamped on them.

In Mr Wood's trouser pockets D. S. Galloway also found a handwritten list of names and numbers. The list is Crown Production No. 3. Mr Wood had no money on him.

In reply to caution and charge, the accused said:-



## MiniTrial Starter Pack – East Ayrshire 2006

*“Come off it. It’s only a few dollars. The guy in the BMW shouted me over and said could I give this wee envelope to the bouncer. Anyway, you can’t do me for supply. I am no dealer. I was just going to pass the sweeties on – and I wouldn’t have made a penny.”*

I have noted his reply in my notebook.

Mr Wood said nothing about mints or breath-fresheners.

I have a little experience of drugs related offences and I recently attended a training session as part of my police duties.

The Ecstasy tablets with a dollar sign stamped on them are sometimes known as “dollars”.

Ecstasy tablets are often referred to as “sweets” or “sweeties”.

The number of tablets found in the possession of Mr Wood clearly indicates his intention to supply tablets to others. There were too many tablets for his own personal use. They were also wrapped in clingfilm – in pairs I think.

He also had what I believe to be a “tick list” of the people he was going to supply to.

The tablets had a street value of about £900.

I think there was someone else in the doorway. It was a young woman.

I can identify the person I have been referring to as James Wood. He is sitting over there (points to the accused James Wood).





## 5. Precognitions - defence witnesses

### Defence Witnesses

1. James (*or Jane*) Wood, the accused
2. Gerry (*or Jerry*) Logan

#### The accused – defence witness No. 1.

**James (*or Jane*) Wood,**  
**aged 18, residing at 26 Beech Avenue, student.**

On Saturday 15<sup>th</sup> June, I had gone to the “Antarctic Club” in Portland Road, Kilmarnock. I was with my close friend Gerry Logan.

I don’t do drugs – and I am certainly not a drug dealer.

I agree that I physically had 60 Ecstasy tablets in my pocket when the police searched me but I did not know what was in the bag at the time.

I thought the tablets were mints – like those wee breath-freshener things.

I was going to give the tablets to the bouncer - for nothing – as a favour.

I remember it was about 9.30 pm when Gerry and I both went to the door for a breath of fresh air.

I was speaking to Gerry when a guy in a black BMW shouted me over to his car.

I walked slowly over to see what he wanted.

He said “Do us big favour and give these to Dave the bouncer. Thanks.”

He handed me the poly bag and drove off.

I saw that there were wee white tablets in the bag, but I just thought they were those mint things.

That when the police detained me.

I accept that the police lawfully searched me and that they found what they say they found.

I don’t know anything about their experience of drugs.



## MiniTrial Starter Pack – East Ayrshire 2006

The rest of the police evidence is simply not true.

I did not look up and down the road.

I did not give the driver anything.

I did not say a word to him.

He just handed me the package and drove off.

I did not wave when he left.

I certainly did not say “*It’s only a few dollars.*” in reply to caution and charge.

Anyway, there is no way that the police could have seen what they say they saw.

The handwritten list which I had in my pocket is just a list of people I know. I was hoping to get together a football team for a charity fundraising event. To help sponsor the event I was going to ask them to contribute £6 – but for a couple of them I was going to suggest just £2. That’s where the figures come from.

This is all just a horrible misunderstanding.

I am not guilty of this charge.



## MiniTrial Starter Pack – East Ayrshire 2006

### Defence witness No. 2.

**Gerry (or Jerry) Logan,**  
**aged 17, residing at 12 Coll Crescent, student.**

On Saturday 15<sup>th</sup> June, I had gone to the “Antarctic Club” in Portland Road, Kilmarnock. I was with my best friend James Wood.

James Wood doesn’t do drugs – and he is certainly not a drug dealer.

I know that he physically had 60 Ecstasy tablets in his pocket when the police searched him but he did not know what was in the bag at the time.

He thought the tablets were mints – like those wee breath-freshener things.

He was going to give the tablets to the bouncer - for nothing - as a favour.

I remember that it was at about 9.30 pm when James and I both went to the door for a breath of fresh air. James was speaking to me when a guy in a black BMW shouted him over to his car. James walked slowly over to see what he wanted. I heard the driver say “Do us big favour and give these to Dave the bouncer. Thanks.” He handed James a poly bag and drove off. I saw that there were wee white tablets in the bag, but I just thought they were those mints things. James did too. That when the police detained James.

I think this is all just a horrible misunderstanding.

James is definitely not guilty of this charge.

I can’t remember if James looked up and down the road. I can’t remember if James gave the driver anything. I can’t remember if James said anything to the driver. The driver just handed James the package and drove off. I can’t remember if James waved when he left.

I can’t remember what James said to the police.

I don’t know anything about a football team for a charity fundraising event.



### 6. 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
11. **The Defence Case** is presented as follows:  
  
    **The accused** - "**examination-in-chief**" by the Defence  
    The accused - "**cross examination**" by the Crown  
  
    **Witness 2** for the Defence - examination in **chief** by the Defence.  
    Witness 2 - **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**
18. **The End - Feedback please.**



## Additional Materials - for the drugs case

### ***“Drugs Update Sheet”.***

*This sheet contains additional information for the drugs case. It is for distribution to the participants prior to the trial – after everyone is familiar with the Starter Pack material. It is followed by a copy of the forensic science report, the joint minute and the “List of Names” (a production) – which should all be available for the trial.*

### **URGENT      FURTHER INFORMATION**

#### **H. M. Advocate v. James Wood**

As a result of continuing preparation for the trial diet the Crown and the Defence (and the witnesses – who should act in role) are now aware of the following new information:-

**The Antarctic Club** – this is a new club which has only been open for a day or two. It has attracted a broad range of people from various walks of life.

**The drugs** referred to in the forensic science report have actually been produced as Label Production No 1 – which can be shown to the jury if it thought appropriate. *(The production will be available at the start of the trial.)*

**Sergeant Galloway** - has many years experience. She tends to be very dogmatic and a bit too sure things. She believes that at the accused is guilty without any shadow of a doubt – and appears anxious to make sure that the jury convict.

**Constable Yuille** – is a relative novice. He not very forthcoming with information. For some reason he is not keen to dwell on the details of what he says is in his note book.

**James Wood** – the accused is a delightful young man. Basically “very nice but dim”. He is quiet and unassuming – but he listens to the questions and answers clearly. He is an only child. He stays at home with his parents – who are both teachers. He is studying music at a local college.

*N. B. The accused will know by the time the trial starts whether or not he is in fact guilty or innocent.*

**Gerry Logan** – is a down to earth sort of guy. He has a dreadful memory – but the things he can remember he puts across well. He lives at home with his mother. He has to leave school and get a job soon – to pay for medical treatment which his mother needs.



## MiniTrial Starter Pack – East Ayrshire 2006

CROWN PRODUCTION NO. 2

SCOTTISH FORENSIC SCIENCE LABORATORIES

### FORENSIC SCIENCE REPORT

By Des Murphy and Maureen Browne

**Her Majesty's Advocate v. James Wood**

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On 24th November at the Scottish Forensic Science Laboratories we both examined Crown Label Production No. 1 which is a polythene bag containing 60 white tablets.

Said tablets were found to contain methylene-dioxy-methyl-amphetamine (MDMA) the controlled drug commonly known as Ecstasy which is a Class A drug specified in paragraph 1(c) of Part 1 of Schedule 2 to the Misuse of Drugs Act 1971.

This is a true and accurate report.

Signed

*Des Murphy*

Forensic Scientist

*Maureen Browne*

Forensic Scientist



## MiniTrial Starter Pack – East Ayrshire 2006

### SHERIFFDOM OF NORTH STRATHCLYDE at KILMARNOCK

#### **JOINT MINUTE OF ADMISSIONS**

in the cause

HER MAJESTY'S ADVOCATE

Against

JAMES WOOD

---

A For the Crown and

B For the Panel, James Wood

have agreed and hereby agree as follows :-

1. that Crown Label Production No. 1 is a polythene bag containing 60 white tablets;
2. that said tablets were examined by Des Murphy and Maureen Browne, both forensic scientists at the Scottish Forensic Science Laboratories, on 24<sup>th</sup> November;
3. that Crown Production No 2 is their report of said examination; and
4. that said tablets were found to contain methylene-dioxy-methyl-amphetamine (MDMA) the controlled drug commonly known as Ecstasy which is a Class A drug specified in paragraph 1(c) of Part 1 of Schedule 2 to the Misuse of Drugs Act 1971.

IN RESPECT WHEREOF

Signed A  
for the Crown

Signed B  
for the Panel James Wood



## MiniTrial Starter Pack – East Ayrshire 2006

SHERIFFDOM of NORTH STRATHCLYDE  
at KILMARNOCK

### **JOINT MINUTE OF ADMISSIONS**

in the cause

HER MAJESTY'S ADVOCATE

Against

JAMES WOOD

\_\_\_\_\_





## MiniTrial Starter Pack – East Ayrshire 2006

CROWN PRODUCTION NO. 3

### Handwritten List of Names and Numbers

*Valerie* 6

*John* 6

*Ronnie* 2

*Jim* 6

*Jane* 2

*Frank* 6

*Gerry* 6

*Colin* 6

*Roy* 6

*Neil* 6

*Eugene* 6



## 7. The 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.

The Crown invites you to accept that that **there is no reasonable doubt that the accused James (or Jane) Wood is guilty of the offence charged.**

On the evidence, the factors pointing to James Wood's guilt are as follows: -

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

In short, the Crown say that on the evidence you would be fully justified in finding that James Wood has been proved **guilty "beyond reasonable doubt"** - and that you should convict. Mr Wood has no defence.

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



## 8. The 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 – **James (or Jane) Wood**. 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 Mr Wood's guilt, then you must acquit.

In this case, I am inviting you to accept that the Crown has clearly failed to prove its case.

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

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

In short, on the evidence, you would be fully justified in finding that **guilt has not been proved**. There is a reasonable doubt - and Mr Wood is entitled to the benefit of that doubt. In any event Mr Wood has established a defence. I invite you to agree that Mr Wood should be acquitted - and to return a verdict of "**not guilty**".

## 9. The Charge



## MiniTrial Starter Pack – East Ayrshire 2006

### SHERIFF'S CHARGE TO THE JURY - a possible outline

**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. Please consider the evidence with care. It is your recollection and your assessment of the evidence that counts - and 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 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.

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 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.

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

However, I would like to say a few words about the **LAW**.



## MiniTrial Starter Pack – East Ayrshire 2006

As you can see from the indictment, the charge alleges that the accused committed an offence under the Misuse of Drugs Act 1971. The drug referred to is Ecstasy which is a Class A controlled drug.

The charge alleges a contravention of section 5(3) of the Act – which relates to “possession” of a controlled drug “with intent to supply it to another”.

It is unlawful, in general, for a person to have “**possession**” of controlled drugs. There are two elements to the meaning of possession – and the Crown must prove both. The first is “**knowledge**”. The Crown must prove that the accused knew that he had a substance of some kind which was in fact a controlled drug. They don’t actually have to prove that he knew he had the drug in question, if they prove he knew he had a substance in his possession. The second element is “**control**”. For the element of control to be established, it must be proved that the accused had a practical say in the disposal of the substance. A person who is carrying an object in his pocket will normally have control over it in the relevant sense. He can keep it, take it out and dispose of and so on.

“**Supply**” applies to sale, supply for a price, or exchange for something else, or to handing the drug over for no consideration whatsoever. It is supply to give drugs to a friend just as it is to sell them on the street. The issue is whether it has been proved that the accused intended to supply any of the drugs to another. Proof of intent to supply can be inferred from surrounding circumstances or from the quantity or form of the drugs.

The question for you is whether the prosecutor has proved beyond reasonable doubt that the accused James (*or Jane*) Wood is guilty of the offence labelled - as set out in the indictment.

In the circumstance of this particular case you may be entitled to acquit the accused by virtue of **section 28(2)** of the Misuse of Drugs Act 1971 - which has the following effect. In this case you have heard evidence from the accused that he thought the tablets were mints or breath fresheners and not controlled drugs. If you believe the accused you must acquit him - but even if you don’t believe the accused but you are left overall with the view that the accused (in the words of Section 28) “neither knew, nor suspected, nor had any reason to suspect” that the package contained controlled drugs, you must acquit. Remember that there is no burden on an accused person to prove anything at all. The burden of proof rests on the Crown throughout. It is for the Crown to exclude that defence beyond reasonable doubt. You could not convict the accused unless the Crown has satisfied you beyond reasonable doubt that the defence under section 28 should be rejected.

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.

THERE ARE **THREE VEDICTS** OPEN TO YOU

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



## MiniTrial Starter Pack – East Ayrshire 2006

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.



## 10. Jury Observation Sheets - for the jurors.

### (a) JURY OBSERVATIONS on the PROSECUTION Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

**FACTS**                      established by the evidence of the prosecution witnesses  
and any doubts raised.

**Witness Number 1**

---

**Witness Number 2**

---

#### CREDIBILITY and RELIABILITY

Circle the response which most closely corresponds with your impression of each witness:

SA	=	Strongly Agree
A	=	Agree
D	=	Disagree
SD	=	Strongly Disagree

<b>Witness 1</b> was a believable and reliable witness	SA	A	D	SD
--	----	---	---	----

<b>Witness 2</b> was a believable and reliable witness	SA	A	D	SD
--	----	---	---	----

Why did you reach those conclusions?

#### Prosecution's Closing Speech:

How did the prosecution use the evidence to prove its case?

### (b) JURY OBSERVATIONS on the DEFENCE Case

Note : The jury will determine whether the accused is guilty or not guilty or the charge is not proven - based upon the facts of the case, the credibility (believability) and reliability of



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the witnesses and the law which applies to the case. The jurors can use this sheet to note the proceedings at the trial if they wish. As the evidence emerges, record the facts established by the witnesses, or any doubts raised by their evidence, and your impressions of the credibility and reliability of the witnesses.

**FACTS** established by the evidence of the defence witnesses  
and any doubts raised.

**Witness Number 1**

---

**Witness Number 2**

---

### **CREDIBILITY and RELIABILITY**

Circle the response which most closely corresponds with your impression of each witness:

SA = Strongly Agree  
A = Agree  
D = Disagree  
SD = Strongly Disagree

**Witness 1** was a believable and reliable witness                      SA      A      D      SD

**Witness 2** was a believable and reliable witness                      SA      A      D      SD

Why did you reach those conclusions?

### **Defence Speech to the Jury:**

How did the defence use the evidence to raise a reasonable doubt?





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## Chapter 4 - Web Links - some law-related links

### MiniTrial



<http://www.minitrial.org.uk>

The MiniTrial homepage – MiniTrial materials and an interactive courtroom

### Scottish Courts & Sheriff Clerks

<http://www.scotcourts.gov.uk>

\* Where *is* your local Sheriff Court? See Locations - thanks to Scottish Courts

### The Faculty of Advocates

<http://www.advocates.org.uk> -

The Faculty of Advocates

<http://www.advocates.org.uk/web/whatis.htm> -

\* What *is* an "advocate"? A summary - thanks to the Faculty of Advocates

### The Law Society of Scotland

[http://www.lawscot.org.uk/whatis/whatis\\_frame.html](http://www.lawscot.org.uk/whatis/whatis_frame.html)

\* What *is* Scots Law? A summary - thanks to the Law Society.

<http://www.lawscot.org.uk> -



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The Law Society of Scotland

<http://www.solicitoradvocates.org/> -  
The Society of Solicitor Advocates

## The WS Society

<http://www.signetlibrary.co.uk>  
The Society of Writers to Her Majesty's Signet

## Procurators Fiscal

<http://www.crownoffice.gov.uk> -  
Crown Office and Procurator Fiscal Service

<http://www.crownoffice.gov.uk/publications/newpublics.htm#WitnessInformation>  
\* Witness information - thanks to Crown Office and Procurator Fiscal Service.

## Public Defence Solicitors' Office

<http://www.pdso.demon.co.uk>  
Public Defence Solicitors Office

## The Police

<http://www.scottish.police.uk/mainframe.htm> -  
Scottish Police Forces

<http://www.spf.org.uk> -  
Scottish Police Federation

## Legal Aid

<http://www.slabb.org.uk> -  
The Scottish Legal Aid Board



## Legal Information

<http://www.bailii.org> -

British and Irish Legal Information Institute

<http://www.scotcourts.gov.uk>

Scottish Courts index

<http://www.scottishlawreports.org.uk> –

The Scottish Council of Law Reporting

<http://www.sccrc.org.uk>

The Scottish Criminal Cases Review Commission

## Scottish Parliament

<http://www.scottish.parliament.uk> -

The Scottish Parliament

## Scottish Education

<http://www.gtcs.org.uk/> -

The General Teaching Council for Scotland

## Scottish Executive

<http://www.scotland.gov.uk/library3/justice/vocl-00.asp>

\* Victims of Crime Information Leaflet - thanks to the Scottish Executive

## Citizen Foundation

<http://www.citfou.org.uk> -

Citizenship Foundation

<http://www.citizenshipfoundation.org.uk/main/page.php?18>

Bar National Mock Trial Competition – supported by the Faculty of Advocates



## Young Scot

<http://www.youngscot.org>

Young Scot

## Other contacts that might help

<http://www.advocates.org.uk> -

The Faculty of Advocates

<http://www.cas.org.uk/> -

Citizens Advice Scotland

<http://www.childline.org.uk/> -

Childline UK

<http://www.lawscot.org.uk/> -

Solicitors - The Law Society of Scotland

<http://www.scottish.police.uk/> -

The Scottish Police

<http://www.victimsupportscotland.co.uk/> -

Victim Support Scotland

<http://www.samaritans.org.uk/> -

Do you need someone to talk to? The Samaritans.

<http://www.scottishwomensaid.co.uk/> -

Scottish Women's Aid

<http://www.cica.gov.uk/> -

Criminal Injuries Compensation Authority



## **Internet Safety**

<http://www.scotland.gov.uk/clickthinking> -

Personal Safety on the Internet - from the Scottish Executive

<http://www.wiseuptothenet.co.uk>

Information on safety on the internet - from the Home Office

**Please take care on the internet.**

MiniTrial is not responsible for the content of external internet sites



## Contact MiniTrial?



[www.minitrial.org.uk](http://www.minitrial.org.uk)

If you have any suggestions, revisals or corrections  
or you would like to offer your help or support

Please contact

Sandy Wylie

at

[info@minitrial.org.uk](mailto:info@minitrial.org.uk)

Sandy will try to help  
or put you in touch with someone who can.

He hopes.

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