

INTRODUCTORY EVIDENCE PROBLEM: THE BAD LOCKER

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Schmerd was a sophomore at State U. He had a locker in the corner of the locker room area on the second floor of the Student Center, secluded from passersby and most other students.

Schmerd's locker had a funny smell if you got close to it. Cheryl, whose locker was nearby, routinely crinkled her nose at the smell and would sometimes go up to the locker to try to figure it out. Sometimes it smelled like air freshener or fabric softeners, but mostly a sticky, sweet smell was lurking there. At times, it smelled like clove cigarettes. Cheryl was a good student who had been chosen to be on the college moot court board. She was hiding one secret – a DUI conviction with injuries the month before starting college. She had not informed the University about the conviction either.

Schmerd would hang around his locker frequently, invariably at 11 a.m. and 3 p.m. each weekday, according to another student, Tiffany. There were always people around then, some of whom Tiffany did not recognize as college students, and even a person other than Schmerd who opened the locker.

Bill, whose locker was nearby, was curious about the locker but could not see into it because of its positioning. Late one night, Bill broke into the locker, but did not report the brief sighting of the plastic bags containing something in each. Bill thought it might be marijuana, but could not be sure and did not want to be a snitch, especially since he had broken into Schmerd's locker to check it out. In Bill's opinion, Schmerd was a big-time cocaine dealer who dabbled in marijuana on the side.

Wayne, an employee of the school, arrived at work one day and was confronted by an anonymous note. The note stated, "There are drugs in Schmerd's locker! He is selling stuff and making his tuition between classes. How can he do this in a university?"

Wayne went to the locker and started fiddling with it. He was told the locker code by Bill - 0-0-0. Wayne found multiple baggies of marijuana in the locker, put them in his pocket and went to call the police. The police arrived and Schmerd was detained.

After Schmerd was read his *Miranda* rights by the police he blurted out, "Look, I don't know what you are talking about. My locker is used by lots of folks. Even Bill knows my code – 0-0-0 – and could have put stuff in it. Bill and I had a bad argument last semester over \$30 he claims I owe him. Paul, whose last name I don't know, asked to use it last week and I said sure. No good deed goes unpunished."



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A chemist tested the apparent marijuana and confirmed that it indeed was marijuana in a full report. The chemist then promptly left the country.

A police expert on marijuana use gave her opinion that “people often use fabric softeners, air fresheners and clove cigarettes to cover up the unique smell of marijuana. None of these efforts completely hide the sticky, sweet odor of marijuana, though.”

At the preliminary hearing in the case, Schmerd stated to the prosecutor and her investigator, “I didn’t knowingly have drugs in that locker like you say I did, except maybe once a long time ago by accident. But I will plead guilty to a lesser charge if I can finish school and my record can be sealed.”

Schmerd already has a possession of marijuana conviction, a misdemeanor, based on a plea of guilty. He originally was charged with the distribution of marijuana in that case, a felony.

At trial, the prosecution intends to call several people as witnesses, including Cheryl, Wayne, Bill, the investigator, the police expert, and a chemist who can vouch for the chemist who did the actual analysis of the substance allegedly found in the locker.

You are the trial judge. You are asked to rule on any evidentiary issues using the Federal Rules of Evidence.

After proper objections to all of the evidence and witnesses, would you admit or exclude the prosecution’s proposed evidence? Explain.



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