Area Legal News Mersey Cheshire

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Welcome to the first edition of Legal News, a succinct legal and procedural digest, with updates from the Area Casework Quality Board, issued monthly.

If you have any ideas or requests for topics for future editions let me know.

n Bourne
rea Legal Lead
sharon.bourne@cps.gov.uk

- **This month's edition includes an update on the use of Disclosure Management Documents.**

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Links to legal guidance and Law and Policy Digest

Quick links to useful legal guidance on the Infonet

http://workspaces.cps.gov.uk/sites/casework/100184/SubjectSubjects/Pages/guidance.aspx?subject=Evidence&SectionID=11

(although please note the merits based approach is no longer applicable- the content has been removed)

Law and Policy Digest

The link to the LAPD February 2019 can be found here:

http://infonet.cps.gov.uk/infonet/legal/law_policy_digest/Documents/LAPD%20-%202019%20February.pdf

Crimeline Update

Crimeline Update.docx

Howard Gough, DCCP

Hostile witnesses in DA cases refusing to be cross-examined: abuse of process?

Griffiths v CPS [2018] EWHC 3062 (Admin)

Griffiths v Crown Prosecution Service [2018] EWHC 3062 (Admin) (16 October 2018)

Summary

D appealed by case stated his conviction for assault by beating.

His partner (C) made a statement saying he had beaten her repeatedly. She accepted kicking and biting him in self-defence. D contended C had attacked him

with a baseball bat and he was the one acting in self-defence. C accepted she had held a baseball bat to take it out of the hands of their son to prevent him from getting involved in their fight. Subsequently C withdrew support for the prosecution, saying she did not want to go to court. She did not say her statement was untrue.

At the trial, C went into the witness box when called by the prosecution. She confirmed that her statements were hers and that they were true at the time, but then said 'I can't remember anything that happened and I don't want to be here ... we both done wrong that day'.

The prosecution successfully applied to treat C as hostile; but she refused to answer any questions from either side. Ultimately she was excused by the Magistrates.

The defence applied for a stay on the basis that there could not be a fair trial without the complainant being subjected to cross-examination – particularly since the complainant, having said 'we both done wrong that day', could not be used to disprove the defendant's account. The Magistrates rejected that submission. They also rejected a subsequent submission of "no case" and finally convicted the defendant. In the case stated, the Magistrates asked: 1) whether they were wrong to refuse the application for a stay, 2) whether they were wrong to reject the submission of "no case" and 3) whether they were wrong to convict the defendant on the basis of the evidence of the complainant.

In answering 1), the Divisional Court referred to the cases of Ebrahim [2002] EWHC Admin 130 and Morgan v DPP [2016] EWHC 3414 Admin. They recognised that in DA cases, the reality is that complainants often are not present. It does not necessarily follow that a fair trial is impossible. Defendants can give their own accounts, and can make submissions about the amount of weight to be attached to any complainant evidence that is hearsay. In this particular case, the defence also submitted that C accepting 'we both done wrong' at the trial was crucial to the issue of fairness. However, the DC rejected that argument on the basis that C had always accepted kicking and biting D, and holding a baseball bat.

Accordingly the DC decided there was no basis to stay the prosecution.

Turning to 2) and 3), the DC considered the test in Galbraith. The question was: could the Magistrates have convicted D on the basis of C's evidence? The answer was 'yes'. Even if a complainant at trial gives a completely conflicting account to her statement, the case of Morgan tells us that the tribunal of fact will need to decide which, if any, account is truthful. In this case, the use of the words 'we both done wrong that day' fell far short of any admission that she was the aggressor.

This case shows the value of asking a potentially hostile witness to confirm their statements are indeed theirs, as this is a statutory requirement to admit statements under s.119. This case serves as yet further authority that the Crown can establish a prima facie case even where a witness is hostile or inconsistent – the decision as to truthfulness of accounts and reliability of witnesses rests with tribunals of fact.

Paragraph 21 of the judgment is a helpful statement that where defendants make an unsuccessful submission of "no case" and then do not give evidence, a decision to acquit could well be perverse.

• Disclosure Management Documents

Below is a summary of the recent training sessions.

DMD training January 2019.docx

• Learning points from the CQB

Can we prove the case against each defendant?

Charging decisions and subsequent reviews need to address the part played by each defendant.

When compiling the adverse case reports over the last few months, I noticed a number of cases where we end up offering no evidence against the wife/partner in cases where we charge both with possession with intent to supply a controlled drug.

re has to be some evidence of control of the drugs- it not sufficient merely to prove that someone knew, or must have known that they were there.

I have seen reviews stating "she admits she knew the drugs were there"/"she must have known the drugs were there" and no other evidence.

One case involved a youth co accused with his mother; she accepted full responsibility for the drugs recovered by the police from their address; he said he knew about the drugs his mum was minding; he was charged on the basis "both reside in the house, both aware of what was going on, acting together, joint enterprise"- but there was no evidence he did any acts or had any control or involvement with the drugs; there was no description in the review of what he did and how he was involved;
t control he had over the drugs; more importantly, ıow we prove the case against him.

Mum pleaded guilty and we withdrew the case against the youth which of course is counted as an adverse outcome for the Area.

In one case the defendant for whom we had evidence pleaded guilty and we still set a trial date against the 2nd defendant despite there being no evidence to prove the case against them.

Where there is no evidence against a defendant, we should be sending them back to the police to NFA.

But if we do charge we need to say in our reviews what their involvement is.

VRR letters

In addition to your explanation to the victim, please ensure that you include your details, who you are and why you are writing to them.

Cases sent to the Crown Court

Neil Colville has recently sent out an email to Magistrates Court lawyers about giving the Crown Advocacy Unit notice where there are cases with certain issues, e.g. media interest cases.

We have had a few cases in the Crown Court recently where the Judges have commented that the case was suitable for disposal in the Magistrates Court.

Please see the Allocation Guidelines below.

PDF
Allocation_Guideline
_2015.pdf

Guidance on offences committed during protests, demonstrations or campaigns

Please ensure you are familiar with the contents of the guidance below.

PDF
Offences During
Protests Demonstrati

Updated Case Referral and Notification Guidance 17.1.19

Please see below for guidance on case referrals.

UP TO DATE
Referral and notificati

Schedule 2
cases.docx

Susan Robert
Mersey Cheshire Area POCA Support Lawyer

- **POCA Cases- a reminder; criminal lifestyle?**

• The Proceeds of Crime Act 2002 (POCA) applies if all offences from which the defendant has benefited were committed on or after 24th March 2003 ("trigger date").

• Confiscation hearing is mandatory if the defendant is convicted of an offence or offences in Crown Court criminal proceedings (or committal to the Crown Court for sentence) and the prosecutor asks the court to proceed or the court believes it is appropriate to do so.

• Application can be made orally or in writing.

• The Crown Court must proceed by deciding whether the defendant has a criminal lifestyle.

If so it must decide whether he has benefited from his eneral criminal conduct (i.e. is it lifestyle).
• If not, it must decide whether he has benefited from his particular criminal conduct.

The requisite conditions for criminal lifestyle are either: -
a. It is an offence which falls within the provisions of Schedule 2 of the Act see below; or
b. It constitutes conduct forming part of a course of criminal activity i.e. convicted of four or more counts from which he has benefited; or
c.. It is an offence committed over a period of at least six months and the Defendant has benefited from the conduct which constitutes the offence.

Please see embedded document for a list of Schedule 2 offences.

I hope you've found this newsletter useful. Please let me know if there's anything you'd like to highlight in future editions.

Sharon Bourne.