



**King Street Chambers**  
The Chambers of Mrs Nancy Hillier

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## Criminal Team News

### **This month...**

John-James Hallissey identifies updates to the criminal law reported since the last newsletter.

### **PLUS,**

Caroline Bray on the new sentencing guidelines for dwelling burglary.

**Ambush defences:** The defendant was charged with failing to provide a specimen. The defendant managed to provide a specimen at the roadside, but only after 7 attempts. The defendant then failed to provide a specimen at the station and was examined by the police Doctor who concluded that there was no medical reason for the defendant's failure. At the PTR the defendant's representative indicated that the issues were factual and that the defendant intended to put the Crown to proof. At the end of the Crown's case the trial was adjourned, part heard; at the resumed hearing the defendant sought to rely on an expert report that suggested the Police Constable's explanation to the defendant as to how to blow into the machine was inadequate. The Magistrates refused to allow the defendant to call that evidence. The High Court concluded that either the defendant knew he was going to call that evidence and failed to raise it, or the defendant 'contrived' to raise the issue after the close of the Crown's case and said that, either way, the defendant's approach was to be deplored. The case management regime required that all issues to be raised at trial should be identified in advance. *Writtle v DPP, Divisional Court, 20/1/09*

**Bad Character:** The defendant was charged with burglary of an aviary that contained a number of valuable birds. The defendant's explanation for being in

the aviary was that he intended to release a number of wild birds he maintained were being kept, illegally, by the owner of the aviary. The only wild bird found in the aviary was a single magpie. The Court of Appeal concluded that the defendant's approach to the case amounted to an attack on the complainant's character sufficient to allow the judge to permit the jury to know of the defendant's previous convictions for burglary from 1987 and 1997. The Court of Appeal noted that the judge might have been wise to direct the jury not to consider the convictions when considering whether the defendant had a propensity to burgle, but rather to rely on the convictions only as a way of assessing the man who was attacking the character of the complainant. *R v David Hearne, Court of Appeal (Criminal Division), 16/1/09*

**Cannabis:** Cannabis is now, once again, a class B drug, with effect from 26<sup>th</sup> January. For simple possession the maximum sentence is now 5 years on indictment, but remains 3 months in the Magistrates' Court. The maximum fine available to Magistrates has risen from £1000 to £2500. Magistrates' sentencing powers for supply and production rise from 3 months and a £2500 fine to 6 months and a £5000 fine. Supply and production sentences on indictment remain unchanged.

**Passing on sexually transmitted diseases:** *R v Peace Marangwanda:* A very odd case! The defendant was originally charged with sexual activity with a child but acquitted after a jury failed to agree. D moved in with a woman and her 2 young daughters and, shortly after moving in, was diagnosed with gonorrhoea. The woman's 2 young daughters then both contracted gonorrhoea. After the jury failed to agree on whether the defendant had been involved in sexual contact with the young girls the defendant pleaded Guilty to causing Grievous Bodily Harm on the basis that there was no sexual contact but that he has passed the disease to the girls through regular contact and poor personal hygiene. The Court of Appeal reduced a 2 year sentence to one of 12 months but upheld a sexual offences prevention order on the basis that any man who cared for children and was prepared to act recklessly should be made the subject of a sexual offences prevention order. (*[2009] EWCA Crim 60*)

**Costs:** A firm of solicitors represented 2 defendants in the Magistrates' Court, both of whom were committed for sentence. The committal for sentence was listed at the Crown Court under a single case number. The firm claimed 2 committal for sentence fees but the Supreme Court Costs Office concluded that the firm was entitled to only one fee, irrespective of how many defendants they represented. *R v Sturmer and Others, Supreme Court Costs Office, 7/1/09*

**Criminal Justice and Immigration Act:** Section 119 was brought into force on 1 January and creates a new offence of Causing a Nuisance on NHS premises.

### **Offence of causing nuisance or disturbance on NHS premises**

1. A person commits an offence if
  - a. the person causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work,
  - b. the person refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and
  - c. the person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself.
2. A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 120 goes on to grant police constables the power to remove from NHS premises anyone they reasonably suspect has committed or is committing an offence under section 119. The same power is also granted to 'authorised officers' (NHS Staff) but with the proviso that an authorised officer may not remove a person from NHS premises if he has reason to believe that the person to be removed requires medical treatment or care, or that the removal of the person would endanger that person's health.

Note that although the offence is described as being an 'offence of causing a nuisance on NHS premises', no offence is committed until the person who causes a nuisance refuses to leave. If the drunk man in A&E on Saturday night makes a thorough nuisance of himself but then leaves when asked to do so, he commits no offence under section 119. Equally, if the drunk man in A&E makes a nuisance of himself and then refuses to leave when asked to do so, he commits no offence under section 119 if the reason he is on the NHS premises is because he is trying to obtain medical advice or treatment. Finally, note that the nuisance or disturbance must be caused to NHS staff, so our drunk man can abuse his fellow patients as much as he pleases, so long as he doesn't disturb the staff.

Senior Clerk: Sharon Easton

65-67 King Street, Leicester LE1 6RP - DX 10873 Leicester 1 - Tel: 0116 254 7710 -

Fax: 0116 247 0145

email: [clerks@kingstreetchambers.com](mailto:clerks@kingstreetchambers.com)

[www.kingstreetchambers.com](http://www.kingstreetchambers.com)