



King Street Chambers
The Chambers of Mrs Nancy Hillier

Criminal Team News

This month...

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

PLUS,

Nadia Mansfield on Polygraph tests for sex offenders.

Possession of Cannabis: Is now an offence for which a fixed penalty notice may be issued. As of 28th January, anyone found in possession of cannabis may be issued with a fixed penalty of £80 for those aged 16 and over or £40 for those under 16. As with other fixed penalties, anyone issued with a notice has 21 days in which to pay or request a court hearing. If neither of those things are done within 21 days then a fine of 1.5 times the fixed penalty is registered against him.

Bail: The defendant was charged with possession of class A drugs with intent to supply. He was granted bail by the Magistrates and committed to the Crown Court. The Crown had never opposed bail but the Judge in the Crown Court said that the defendant was facing a very serious charge, referred to the fact that the defendant had previous convictions and remanded him in custody. The High Court concluded that the Judge's decisions was irrational and reversed it. It was held that it was not good enough for the judge simply to recite one of the statutory grounds for refusing bail,. The judge had to explain the underlying facts that led to his decision. *R (Fergus) v Southampton Crown Court [2008] EWHC 3273 (Admin)*

Confessions: The defendant was initially treated by the police as a witness in relation to terrorist offences. He spent several hours making a witness statement in which he said

that, far from intending to withhold information about terrorists from the police he was in fact keen to tell them everything he knew. The police continued to question him even after the point had been reached where he should have been arrested, cautioned and afforded his PACE rights. When he had finished making his statement the police arrested him on suspicion of withholding information about terrorism and interviewed him. In interview the defendant simply said that he adopted the account he had given in his witness statement and entered a prepared statement in which he said he was trying to assist the police. When the defendant was charged his lawyers applied to have the confession excluded under section 76 PACE. The Court of Appeal found that, since the defendant had expressly said, after caution, that he had been trying to help the police and had said nothing to suggest that his confession might have been unreliable, then the judge was entitled to conclude that there was nothing to undermine the reliability of the confession. The judge was then asked to exclude the confession under section 78 PACE but the judge concluded that, since the defendant had expressly adopted that statement in his interview, it ought to be admitted in evidence. The Court of Appeal concluded that there was nothing perverse in that decision, nor was it based on any error of law, and so declined to interfere with it. Finally, the defendant's abuse of process argument was rejected on the grounds that abuse of process could only succeed if there was an unequivocal promise not to prosecute and the defendant had acted to his detriment based on that promise. Moral of the story? Don't volunteer information to the police without an absolute promise that you won't be prosecuted for your efforts! *R v Sherif, Ali (Siraj), Ali (Muhedin), Mohammed, Abdurahman and Abdullahi*.

Excess Alcohol: There is no automatic duty on the police to retain custody suite videos of the statutory warning being given to a defendant under section 7 (7) RTA. The defence did not tell the prosecution that the warning was in dispute until the day of trial. By then the custody suite video had been destroyed in accordance with the normal practice of destroying such videos of 3 months. In those circumstances the court's decision not to stay proceedings could not be said to be *Wednesbury* unreasonable. *Morris v DPP*

Adjournments: The defendant was charged with failing to provide information under section 172 RTA. The defendant did not give evidence but, at the end of the case, argued that there was insufficient evidence of the Crown having delivered the section 172 notice to the defendant. The court suggested to the prosecutor that he might want to apply for an

adjournment to fill the gaps in his case, the prosecutor did so and the adjournment was duly granted. The Divisional Court concluded that the lower court had been well within the scope of its discretion, that the adjournment had been in the interests of justice and that the fact that the court suggested the adjournment to the prosecutor did not give rise to the appearance of bias. Another example of the new era of 'cards on the table' proceedings. *R (Taylor) v. Southampton Magistrates' Court (Crown Prosecution Service (interested party))*

Criminal Justice and Immigration Act: Commencement Order No 6 brought the following into force as of 1st February:

- The ground is being paved for the introduction of Youth Conditional Cautions. The Cautions themselves have not yet been brought into force but a provision requiring the Secretary of State to produce a Code of Conduct has been brought into force.
- Periodic reviews of ASBOs. ASBOs imposed on youths must now be reviewed 12 months after they are made and every 12 months after that, for so long as the ASBO remains in force AND the youth remains under 18 years of age. The review must consider the extent to which the youth has complied with the order, the adequacy of the support available to the youth to help him comply with the ASBO and anything else relevant to the question of whether the order should be ordered or discharged. The review is to be carried out by the body that applied for the order (the police or the local authority). A review of an ASBO made on conviction is to be carried out by the police. Applies to ASBOs made or varied since 1st May 2008.
- The availability of Individual Support Orders under s1AA Crime and Disorder Act 1998 is extended. Whereas the court was previously only required to consider an ISO in respect of a youth at the time he was made subject to an ASBO, now an authority that successfully applied for an ASBO against a youth may, during the currency of that ASBO, apply to the court for an ISO. Applies to ASBOs made or varied since 1st May 2008.

The Statutory Instrument is available online at http://www.opsi.gov.uk/si/si2009/uksi_20090140_en_1