

Members of Chambers

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Chambers of Timothy Raggatt QC 4 King's Bench Walk, Temple, London EC4Y 7DL

Crime Team Case Law and Criminal Justice Policy Update

May 2007

Introduction

Welcome to the Third of our criminal updates which we hope that you will find informative. Please feel free to forward it to colleagues and if they wish to be added to our mailing list they just need to send an email to clerks@4kbw.co.uk.

Our next edition will be circulated in **September 2007**.

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Chambers News

NEW Criminal Fees Clerk

Chambers is pleased to announce that Ashley Carroll has joined chambers as our new criminal fees clerk. Ashley has taken over the post from Liz Kempster who had been with chambers for two years.

NEW Junior Clerk

Chambers is please to announce that Katie Barker has joined chambers as our junior clerk.

NEW Website

Construction is underway of our new website which is being designed to give our solicitor and lay clients more information about our barristers and the services they provide. We hope that it will be launched in early July.

CJIT - Secure Email

Chambers is now linked to the **CJIT Secure Email System**. If you are linked to CJIT and wish to email our members or clerks using the system just use the normal email address for the person and add after the .co.uk the following .cjsm.net

If you require any further help in this area please contact Lee Cook our Principal Clerk.

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Profiles



Michael Roques

Call: 2000

Michael Roques was a pupil at 10 Kings Bench Walk in 1999, successfully completing pupillage and obtaining tenancy in 2000. 10 KBW then moved to 9 Lincolns Inn Fields after the purchase of a new building. Michael's work consisted predominantly of Criminal Defence work but he was also involved in Immigration, Mental Health and Prison Law. Michael also began to become involved in Courts Martial work in 2003, travelling regularly to Germany to represent soldiers from a range of regiments including the 2nd Royal Tank Regiment and the Scots Dragoon Guards. As part of this work, Michael was instructed at a very early stage to represent one of the soldiers implicated in the Sgt Roberts friendly fire incident.

Michael moved to 4 Kings Bench Walk in 2007 and has settled in well, enjoying the challenges and opportunities that being in a new Chambers provides.

Michael has covered a huge range of Criminal work in his time at the bar, being a very busy practitioner and rarely out of court. His current work load includes a number of serious cases. Notably, he is presently instructed in a high profile Murder case in Reading being led by Timothy Raggatt QC, and is instructed alone in an Attempted Murder at the Bailey. Historically he has dealt with the full ambit of criminal work including Fraud, Sex and Violence at all levels.

Michael has a reputation for being able to deal well with difficult clients and deal sensitively with complex cases. He has the ability to breakdown difficult legal situations in a way that clients can understand and as a result often gains a clients trust when others have been unable to do so.

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David Sawtell

Call: 2005

David obtained his MA (Hons) and MPhil at Cambridge University, where he read History. He subsequently converted to law at City University, before completing the BVC at the Inns of Court School of Law, London.

David was called to the Bar in 2005 by Lincoln's Inn. His areas of practice include criminal law, general common law, personal injury, employment and social security law.

David's criminal practice encompasses both defence and prosecution work in the Magistrates' Court, Crown Court and Youth Court, accepting both publicly and privately funded instructions. David also has experience of appeals to the Crown Court from the Magistrates' Court.

His work encompasses a wide range of criminal offences, including violent and dishonest offences, public disorder, and drugs offences, as well as director disqualification, benefits fraud and road traffic matters.

David is a member of the Free Representation Unit, the Criminal Bar Association, the Personal Injuries Bar Association and the South-Eastern Circuit.

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Crime Team Case Law and Criminal Justice Policy Update May 2007 Continued

General Case Law Update

R v Boodhoo CA [2007] EWCA Crim 14

Where a defendant fails to appear for trial, whether or not a solicitor should withdraw from the case is a matter of his/her professional judgment. Provided that the judgement was honestly arrived at, no criticism could follow and no wasted costs should be ordered.

Filmer v DPP [2006] EWCH 3450

Prosecution witnesses may supplement the evidence previously given in their witness statements when giving evidence in chief, in either the magistrates or the Crown court, as long as no injustice is caused to the defendant in doing so.

R v Keogh CA [2007] EWCA Crim 528

S.2 & 3 of the Official Secrets Act should be read so as to only impose an evidential burden on a defendant. A reverse legal burden would be incompatible with Art.6 ECHR.

R v IK [2007] EWCA Crim 491

The proceeds of cheating the Inland Revenue can amount to 'criminal property' under s.340(5) POCA 2002, where the trade whose profits/turnover are liable to tax/subject to VAT is a legitimate trade.

R v Rahman [2007] EWCA Crim 342

The Court of Appeal gave detailed guidance regarding the summing up of joint enterprise murder cases.

R v Rogers [2007] UKHL 8

The use of the phrases 'bloody foreigners' and 'go back to your own country' are capable of being racially aggravated abuse under s.28(4) CDA 1998.

Malcom v DPP [2007] EWHC 363

Magistrates can, in special circumstances, receive further evidence once they have retired to consider their verdict. The *Criminal Procedure Rules* effected a sea change in the way criminal trials are to be conducted. There is an implicit duty in r.3.3 for all parties to actively assist the court in exercising its case management powers. The defence have a duty to make the real issues in the case clear, at the very latest, before the prosecution closes its case.

R(Gillian) v DPP [2007] EWHC 380

A Crown court has the power to hear a second *Newton* hearing, where the magistrates have held one before committing the case for sentence. Whether a second *Newton* is appropriate in a particular case will depend on its individual circumstances, such as some significant development having occurred since the hearing in the magistrates' court.

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Crime Team Case Law and Criminal Justice Policy Update May 2007 Continued

Southard v DPP AC [2006] EWHC 3449

The words 'fuck you' and 'fuck off' are themselves potentially abusive. For a person to be caused harassment, they need not experience any sort of emotional disturbance or upset, however the harassment caused needs to be more than trivial for a defendant to be guilty of an offence. A police officer may be caused harassment by the use of abusive words or behaviour, however each case will depend on its individual circumstances.

Hackney LBC v Rottenburg [2007] EWHC 166

A court is not obliged to accept the unchallenged evidence of a professional witness, in this case the witnesses being Environmental Health Officers regarding the issue of whether the amount of noise emanating from a property amounted to a statutory nuisance.

Milton v CPS [2007] EWHC 532

A court can take into account a defendant's unusual driving skills when considering whether or not s/he is guilty of dangerous driving.

Griffiths v DPP DC [2007] EWHC 619

An illegible document cannot be deemed served as it cannot be used for the purpose intended.

R v Hulme [2006] EWCA 2899

Where a hostile witness's previous inconsistent statement is admitted into evidence under s.119 CJA 2003, the general rule is that the jury must not be given a copy of it, either in the jury box or when they retire.

R v Thompson & Hanson [2006] EWCA Crim 2849

A decision by a Judge to dismiss a charge sent for trial under s.51 CDA 1988 is not appealable by the Crown under s.58 CJA 2003.

R v Laporte v Chief Constable of Gloucestershire [2006] UKHL 55

The police cannot lawfully take action to prevent an expected breach of the peace until it is apprehended to be 'about to occur' .i.e. it is imminent.

R v Adams [2007] EWCA Crim 1

Where allegations of jury bias are made, a court has the power to hear evidence from individual jurors on the matter, but the circumstances where this would be necessary will be rare. Any person seeking to interview jurors about the question of jury bias following a trial should first obtain the leave of the Court of Appeal.

R v Marshall & Crump [2007] EWCA Crim 35

The fact that a jury had access to material obtained from the internet regarding sentencing and alternative counts to the offence charged, during their deliberations, did not itself make a conviction unsafe.

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Crime Team Case Law and Criminal Justice Policy Update May 2007 Continued

R v Hart & others [2006] EWCA 3239

The Court of Appeal expressed concern about the significant number of applications for leave to appeal being made, which were wholly without merit and taking up the time of the court. The Court stated that it may have to consider using its powers to order time in custody pending appeal not to count as part of the sentence, more frequently. The mere fact that counsel had advised that there were grounds of appeal would not necessarily mean the application had merit.

R v James & Lawrence [2007] EWCA Crim 393

There is no general rule to prevent a person, who had been in court during proceedings, from talking to a potential witness. The proper way to deal with any suspicions arising from such conduct is for the court to identify what had happened and provide counsel with the material to cross-examine on.

G v Chief Constable of W.Yorks Police [2006] EWHC 3485

A custody officer is entitled to detain a suspect while consulting the CPS as to the appropriate charge. The 'threshold test', rather than the 'full code test' (both set out in the guidance issued by the DPP), is not an appropriate test for determining whether there is sufficient evidence to charge. The threshold test is only relevant in so far as the custody officer should consult the CPS when it is crossed. The court criticised the retention of the functions of the custody officer since it should now be the responsibility of the CPS to determine when a defendant should be charged.

R v Humphries [2006] EWCA Crim 558

Where it comes to light after the jury had retired that a witness had given an incorrect or misleading answer in evidence, then, if the prosecution were prepared to make an admission correcting that answer, the jury could receive that admission in evidence even though they had retired.

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Crime Team Case Law and Criminal Justice Policy Update May 2007 Continued

Legislation & Policy Update

The Emergency Workers (Obstruction) Act 2006

As of 20th February, this Act created a new offence of obstructing or hindering certain emergency workers who are responding to emergency circumstances.

Management of Terrorism Cases Protocol issued by the President of the QBD 30th January 2007

The Violent Crime Reduction Act 2006 (commencement no.1) Order 2007

This SI brought certain provisions of the above Act into force on 12th February, including:

S.42, which increases the maximum sentence for possessing an article with a blade or point in public or on school premises to 4 years.

S.55, which allows the prosecution to successfully prosecute sexual offences even though it is unclear whether a particular offence occurred before or after the commencement of the SOA 2003.

S.55, which provides that sexual offenders sentenced to imprisonment for public protection under s.225 CJA 2003 will remain on the sexual offenders register for life.

The Criminal Justice Act 2003 (commencement no.8 and transitional & saving provisions) (amendment) Order 2007

This SI further delays the implementation of youth community sentences until 4th April 2009.

The Road Safety Act 2006 (commencement no.1) Order 2007

This SI brought certain provisions of the above Act into force on 27th February, including:

S.26, which increases penalties for breach of the requirements as to a driver's control of a vehicle and the use of a hand held mobile phone or similar device while driving.

Ticket Touting (designation of football matches) Order 2007

This SI designates football matches for the purposes of s.166 CJPOA 1994 and makes it an offence for an unauthorised person to sell, or otherwise dispose of to another person, a ticket for a designated football match.

The Criminal Procedure (amendment) Rules 2007

The following new provisions were added and amendments made to the CrPR 2005, coming into force on 2nd April:

A new **Part 4** (service of documents) is added, and most of the existing rules about service are revoked.

A new **Part 14** (indictments) is added, and the Indictment Rules 1971 are revoked.

Part 19 (custody & bail) is amended to allow for applications to vary bail conditions to be made before charge and remove some inconsistencies.

Part 31 (restriction on cross-examination by a defendant acting in person) is amended so that it applies to the magistrates court.

A new **Part 28** (witness summonses, warrants & orders) is added

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Crime Team Case Law and Criminal Justice Policy Update May 2007 Continued

Hearsay Update

R v X CA 30th January 2007 (unrep.)

Where one defendant wants to use the out of court assertions of a co-defendant, but the evidence does not amount to a confession under s.76A PACE, then s.114 CJA 2003 could potentially be used to admit it.

M v DPP DC 6th March 2007 (unrep.)

The rules of evidence as to hearsay notices are not mere formalities and should be followed in ASBO applications, where hearsay evidence is common. However a court can allow for hearsay notices to be dispensed with if it is in the interests of justice to do so. NB: (A term 'not to knowingly associate with a person or persons while such a person or persons are engaged in attempting or conspiring to commit any criminal offence' is not lawful as it involves a value judgment on the part of the defendant).

Bad Character Update

DPP v Chand AC [2007] EWHC 90

Evidence of a defendant's previous convictions for dishonesty were not admissible in relation to proceedings for a charge of theft, where the issue was whether a correct identification had been made from CCTV.

R v Murphy [2006] EWCA Crim 3408

A single conviction from 20 years earlier might be capable of establishing propensity but only very rarely. Such cases would be expected to contain some very special and distinctive feature. In cases with less distinctive features in common, a court would require some evidence of the propensity manifesting itself during the intervening period to render the earlier evidence admissible as to a continuing propensity. Although the Court of Appeal are slow to overturn decisions by Judges on matters of bad character, there may be circumstances where a Judge's judgement as to the capacity of prior events to establish propensity it plainly wrong, and the Court of Appeal will have to intervene.

R v Eastlake [2007] EWCA Crim 603

A judge was right to have allowed evidence of a defendant's previous convictions for street violence to be adduced as evidence of propensity to commit assaults on person in the street, even though the issue in the case was identification.

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Crime Team Case Law and Criminal Justice Policy Update May 2007 Continued

Sentencing Update

R v Gordon & others [2007] EWCA Crim 165

Issues relating to time spent on remand should be dealt with at the sentencing hearing, however if the court requires further information in order to reach an accurate calculation as to the number of days to be taken into account, then that part of the hearing can be adjourned. This adjournment can, in exceptional circumstances, be delayed for longer than 28 days and would not fall foul of the slip-rule time limit (s.115 PCC(S)A 2000).

R v Reynolds & others [2007] EWCA Crim 538

The Court of Appeal noted that frequent mistakes are being made in sentencing under the new regime for dangerous offenders. Where a mistake is made it should be dealt with under the slip-rule. However, where the mistake is identified within 28 days but the court cannot deal with it within that period, or feels that sentencing should be delayed beyond it, the sentencing Judge should rescind the sentence and effectively begin the sentencing process again, allowing the court to adjourn final sentence to a later date. If a defendant appeals a sentence that is later realised to have been wrongly imposed, in the sense that in a greater/more onerous sentence was required, the Court of Appeal has no power to increase the defendant's sentence and must allow the original sentence to remain.

R v Seed; R v Stark CA [2007] EWCA Crim 254

The courts when sentencing, particularly at a time when the prisons are overcrowded, should bear in mind s.152 & 153 of the CJA 2003, which contain provisions that should have an impact on prison numbers. Fines should be more widely considered. Custody is usually inappropriate for first time offenders, particularly if they are young.

R v C, Bartley & others [2007] EWCA Crim 680

The Court of Appeal considered the practical difficulties experienced by Judges considering imposing extended sentences under both the new and the old sentencing regimes.

The following guidance was given:

1. There is nothing unlawful about the imposition of concurrent or consecutive sentences within either regime relating to extended sentences, and indeed, where sentences of life imprisonment or imprisonment for public protection are imposed. The Court of Appeal will not interfere with such sentences unless the practical result is manifestly excessive, or poses real problems of administration.
2. Nonetheless Judges should avoid consecutive sentences if at all possible and adjust the custodial term/minimum period within concurrent sentences to reflect the overall criminality if that is possible.
3. If consecutive sentences are appropriate or necessary, if one of those is a determinate sentence then that should be imposed first and the extended sentence(s) expressed to be consecutive.
4. There is no obligation for the sentences to be expressed in historical date order.

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**Crime Team Case Law and Criminal Justice Policy Update
May 2007 Continued**

R v Farrar [2006] EWCA 3261

In considering the issue of whether a defendant convicted of a sexual offence poses a significant risk of serious harm, it was wrong for a Judge to hear evidence to determine the truth of a previous similar allegation that had never led to prosecution.

R v Archer [2006] EWCA Crim 536

A Judge sentencing a defendant to a life sentence should take into account the risk of an offender dying in prison when setting a minimum term.

R v Qayum [2006] EWCA 3265 (counsel for the defendant S.Heptonstall 4KBW)

A Judge was criticised for proceeding straight to sentence in a case where the defendant was of previous good character, in full-time employment and had numerous domestic responsibilities, particularly the care of disabled children who depended heavily on his support. This was stated to be "an entirely inappropriate way to approach the question of sentence in this case". In such circumstances "it is manifest that a pre-sentence report should have been obtained", this being an "essential step" in the sentencing process.