

Annex F

Quality Assurance for Advocates

Levels Example Case Study

Example Case Study

This case study has two different outcomes highlighting the different complexities within a case type.

Level 2 Case

Two adult male defendants aged 23 and 25-faced two counts of actual bodily harm and residential burglary.

Both defendants allegedly entered a dwelling house at night, which was occupied by the 75-year-old complainant in poor health. In the course of a confrontation burglary, they ran off after stealing a purse. The complainant phoned the police in a state of distress and gave a description of the defendants and their clothing in detail. The Police attended at his home, and drove him around the immediate vicinity, during the course of which the complainant identified the defendants as the offenders. During the arrest one of the officers was allegedly assaulted by both men. The purse and contents were found behind a hedge near the place of arrest, but subsequent fingerprint tests proved negative.

Both defendants were interviewed and made no comment although both provided written statements in which they stated that they were out walking that evening but had not committed any burglary. They admitted being angry with the police but said they were acting in self-defence when they assaulted the officer. Both defendants had convictions for dishonesty, burglary and assault within the last 10 years. The complainant later attended an identification parade and again picked out both defendants.

Both defendants had been committed for trial, and appeared at a Plea and Case Management Hearing...the prosecutor disclosed that the complainant had made a victim impact statement which made it clear he had deteriorated considerably since the alleged burglary, and might not be up to giving cogent evidence at any trial.

The Defence advocate:

- Saw each Defendant separately, and was satisfied that there was still no direct conflict
- Explained the relevant facts, evidence, law, and weight of evidence
- Advised on credit for an early guilty plea
- Took instructions.

Both defendants then gave an account that they had not committed the burglary, but had found the purse shortly before the arrival of the police.

The Defence advocate:

- Explained the relevance in law of this change of instruction
- Saw the prosecutor who agreed to accept a plea to handling stolen goods on the basis of admissions to the handling allegations and the assaults
- Drafted and agreed a written basis of plea
- Appeared at the subsequent sentencing hearing.

An alternative instruction and outcome – higher end Level 2

Both defendants confirmed they would plead Not Guilty.

When Prosecution and Defence advocates met prior to the Plea and Case Management Hearing, the following issues were identified:

- The issue of joinder in relation to the two different allegations
- Whether evidence of the street identification should go before the Jury
- Whether the complainant should be allowed to give evidence under the Special Measures provisions of the Youth Justice and Criminal Evidence Act 1999, and, if so, what measures should be required
- Whether certain hearsay evidence (such as the contents of the complainant's 999 call) should be admitted under Pt 2 Criminal Justice Act 2003.

The defence advocate:

- Considered and advised whether in any event each defendant should have separate trial advocates
- Took instructions and advised the defendants on each of the above issues
- Subsequently opposed each application by the prosecutor, (whether at 'mention' hearings or trial), citing the applicable statutory and case law
- Edited and agreed with the prosecutor the 'no comment' interviews and written statements.

At the trial the judge sought assistance of both advocates on his summing up.

The Defence advocate assisted, particularly regarding:

- Issues of bad character
- Identification
- Hearsay
- Inferences from silence
- A note was received from the jury about a point of law and the advocate was asked for his opinion.

Both defendants were convicted of both charges and sentenced after the Defence advocate assisted the judge with dangerousness issues.

The Defence advocate gave written advice on appeal against conviction and sentence, and subsequently drafted an appeal against conviction, with written grounds in support.