

## Chapter 2: Preliminaries

### Circumstantial evidence

#### General

#### Examples

#### *Lies*

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#### Footnote 81

See also *R v Zaman* [2017] EWCA Crim 1783

### Relevance and admissibility

#### Relevance

#### *Examples of irrelevance and insufficient relevance*

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#### Footnote 108

Evidence of an accused's previous offending given by a complainant in a previous trial which resulted in an acquittal may be admissible in a subsequent trial as bad character evidence under the Criminal Justice Act 2003, s 101 (see **Ch 18**). Where the complainant's evidence was the essence of the former case and her accuracy or credibility was the critical question, in the subsequent trial it may be appropriate to adduce, in addition to the evidence of the complainant, evidence of the acquittal: see *R v Hajdarmayaj* [2019] EWCA Crim 303.

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In *R v G(T)* [2018] 1 Cr App R 218 (14), the accused was of good character and the trial judge had given an appropriate direction to the jury to the effect that his good character was relevant to his credibility and may have made it less likely that he had committed the offence. The judge added that since there was no suggestion that the complainant was of bad character, there was 'a level playing field' between her and the accused. This was held to be a misdirection, in effect watering down the direction on the good character of the accused. The Court of Appeal said that unless a jury hears that a Crown witness is not of good character, they will assume that there is nothing to speak against the witness' credibility. However, it is submitted that the jury may well assume exactly the opposite, reasoning that if she were of good character,

evidence to that effect would have been adduced just as it had been in the case of the accused. See also **Ch 18**.

## **The functions of judge and jury**

### **Questions of law and fact**

#### ***The construction of ordinary words***

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In *R v Harris* (1986) 84 Cr App R 75, CA, it was held that the words ‘knowledge or belief’ are words of ordinary usage and therefore, in most cases of handling stolen goods contrary to the Theft Act 1968, s 22(1), all that need be said to a jury is to ask whether the prosecution has established receipt, knowing or believing that the goods were stolen. *R v Jones* [1987] 2 All ER 692, CA: whether a person is ‘armed’ while being concerned in the illegal importation of cannabis contrary to the Customs and Excise Management Act 1979, s 86; *Chambers v DPP* [1995] Crim LR 896, DC: ‘disorderly behaviour’ contrary to the Public Order Act 1986, s 5; and *R v Kirk* [2006] Crim LR 850, CA: ‘indecent or obscene’ under the Postal Services Act 2000, s 85(4).

## **The sufficiency of evidence**

### ***Submission of no case to answer in criminal proceedings in the magistrates’ court***

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Under rule 24.3(3)(d) of the Criminal Procedure Rules 2015, SI 2015/1490, in a magistrates’ court, at the conclusion of the prosecution case, on the application of the accused or on its own initiative, the court may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but must not do so unless the prosecutor has had an opportunity to make representations. Under the test in r 24.3(3)(d), a submission of no case should be upheld when there has been no evidence to prove an essential ingredient of the offence alleged.

#### **Footnote 231**

See *Practice Direction (Submission of No Case)* [1962] 1 WLR 227, revoked by *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 1 WLR 2870, but not replaced.

## ***The summing-up***

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Some, sometimes many, directions will be given to juries earlier in the trial because the court is required to provide directions about the relevant law at any time that will assist the jury to evaluate the evidence, prior to any evidence being called, prior to the evidence to which it relates or shortly thereafter (see Criminal Procedure Rules, r 25.14(2) and Criminal Practice Direction VI, para 26K.8.)

Judges now routinely provide *written* directions. Although written directions are permitted but not mandatory under the Criminal Procedure Rules (see rule 25.14(4), the Crown Court Compendium, (July 2019), Part 1, 1-13), cites the relevant research as showing that juror understanding and recollection increases significantly if they are given written directions alongside oral directions and concludes that the argument in favour of written directions is now overwhelming (see Thomas, 'Are Juries Fair?', Ministry of Justice research Series 01/10 (2010) and Thomas, 'Avoiding the Perfect Storm of Juror Contempt' [2013] Crim LR 483).

In most cases the jury will also be provided with a written route to verdict. This poses a series of questions that lead the jury to the appropriate verdict, each question tailoring the law to the issues and evidence in the case (Criminal Practice Direction VI, para 26K.11). A written route to verdict should be provided except where the case is so straightforward that it would be superfluous to do so (*ibid*, para 26K.12), something that one should never be too quick to assume (see *R v Atta-Dankwa* [2018] 2 Cr App R 248 (16), CA at [31]).