Counsel is asked to represent Lenny Wise at his trial for burglary on 30th September, listed for a two day trial before Lyme Crown Court. Counsel has previously been briefed in this matter and therefore has a full set of papers in the earlier brief of 29th August.

Counsel will be fully aware of the issues in this case as a result of preparing for, what became a vacated pre-trial hearing to consider the admissibility of a confession made by our client during his police interview. Prior to the hearing, the CPS conceded that there had been breaches of Code C and that consequently the prosecution would not seek to rely upon Mr Wise’s confession in this case.

Mr Wise maintains his not guilty plea and remains on conditional bail to attend trial on the 30th September.

In the absence of the confession, the only remaining evidence against Mr Wise comprises the eye-witness identification of Shirley Lewis and the evidence of description given by Harold Finney and Lillian Kennedy. In addition there is forensic evidence linking training shoes found in Mr Wise’s flat with shoeprints found at the scene of the crime. Mr Wise maintains he has never worn these shoes and to some extent this is supported by the letter from the forensic scientist Dr Leighton addressed to the investigating officer (enclosure 11 in the original brief). Dr Leighton states that she could not obtain any DNA from the shoes found in Mr Wise’s flat. We assume that had Mr Wise have worn the shoes some traces of his DNA would have been present. Instructing solicitors have written to the CPS and is has been agreed that Dr Leighton’s letter will be adduced by the defence under s. 9 CJA 1967.

Of the prosecution witnesses, Lewis, Kennedy, Finney and Farrington were required, on counsel’s advice to attend trial. There statements are contained in
enclosure of the original brief. The evidence of the remaining witnesses has been agreed and will be read out. The exhibits listed in the prosecution schedule (enclosure 3 of the original brief) will all be produced at trial save those that refer to the police interview.

Counsel will recall that the prosecution seeks to rely on bad character evidence under s 101 (1)(d) CJA 2003 as evidence of propensity. Instructing solicitors remain most concerned about this and counsel is asked to use her best endeavours to challenge the admissibility of this evidence.

The trial length is estimated at 2 days. Counsel is asked to represent Mr Wise and to use her best endeavours to secure an acquittal.

Mitigation

If Mr Wise is found guilty, counsel is instructed to mitigate sentence. Given the current sentencing guidelines on domestic burglary it is difficult to see Mr Wise avoiding a custodial sentence if convicted. However, given his psychiatric condition, the court would no doubt wish to adjourn for a pre-sentence report. Counsel is reminded on the contents of Dr Mayhew’s report which we obtained to support the submission to have Mr Wise’s confession excluded. Mr Wise does not work and receives income support based job seeker’s allowance of £57 per week. He has little, if any, disposable income.

Counsel is requested to represent Mr Wise on a not guilty plea. If convicted Counsel is asked to mitigate on Mr Wise’s behalf and to advise on appeal if appropriate.

27th September
Rachel James
Hannibal and Mountford Solicitors