

INTERVIEWS

A TRIAL ADVOCATE'S PERSPECTIVE



Guildhall
CHAMBERS

Answers (or lack of answers) given at the police station can make or break the case against a defendant.

WHERE DO WE START?

Your first question is “What has s/he been arrested for?”

At that point do a mental check – what are the *elements* of the offence?

I use two examples...

RAPE

Prosecution must prove the following:

- a) Penile penetration of vagina/anus/mouth;
- b) Without consent (check whether assumptions apply);
- c) Without reasonable belief in consent;

CONSPIRACY TO SUPPLY DRUGS

Undercover operation lasting 9 months with multiple defendants from London to Cardiff with Bristol, Swindon in between...

Prosecution must prove:

- a) An agreement between 2 or more people;
- b) including your client;
- b) To supply drugs

DISCLOSURE

Absolutely key

Seek to obtain as much information as possible.

In some cases, police may withhold disclosure. They may seek to set a trap and lead him/her into incriminating themselves. Your job is to minimise the chances of that happening.

So, find out why your client has been arrested - ***what is the evidence upon which the police have decided they have reasonable grounds?***

RAPE EXAMPLE

If one word against another, check that there is a statement/ABE/complaint

Find out whether there is any relevant CCTV before or after incident

If intoxication is an issue i.e. complainant saying alcohol rendered her unable to consent:

- a) statements from bar tenders?
- b) statements from witnesses to before/after?
- c) blood and alcohol samples from complainant?

d) stage at which complaint was made?

e) to whom?

Also worth asking your client in conference whether there is any telephone/facebook or other communication which may have led to reasonable belief in consent.

If so, make the request during interview!

DRUGS CONSPIRACY EXAMPLE

What drugs have been seized?

What do police say is the link is between your client and others allegedly involved? (*You are entitled to know the basis for reasonable suspicion leading to arrest*)

What is the agreement to which police say your client is a party?

Any telephones seized...?

How many others allegedly involved...?

Who they are...

Any relevant CCTV or other recordings?

Cars involved etc...

Get as much information as you can

WHAT IF POLICE DO NOT PROVIDE ADEQUATE DISCLOSURE?

Get it on the custody record!

If they still refuse to provide you with disclosure sufficient for you properly to be able to advise your client then say so **ON TAPE**.

This is invaluable in the trial process.

HOW DOES THIS HELP WITH ADVERSE INFERENCES?

Usually, we can ensure that part of the transcript goes before the jury and it saves you having to go into the witness box and explain that you gave such advice and why.

It also alleviates pressure upon the defendant to give evidence at trial, if that is decided to be the correct course of action.

Taking this course allows me to tell the jury that you, as a professional, wanted to take proper instructions...

Because you were not provided with adequate disclosure, which you had identified to police...

You were unable to do your job...

You therefore advised the client not to answer questions.

It also enables me to comment to the jury that if they were in a police station, arrested in respect of something they did not do and a legal professional whose job it is to advise them, advised them not to answer questions, they may not answer either.

It takes the sting out of any possible adverse inference.

CLIENT CONTACT

For the most part, each client is vulnerable.

They are in the control of the state.

They may well be scared.

They are looking to you to advise and protect them.

Make your mark within the first 60 seconds of meeting them.

Inspire confidence and respect.

Make it clear that you are there for them and no one else.

Clients will lie – for any number of reasons – from actual guilt to being ashamed to not to not wanting to get others into trouble.

So, set out what the grounds for their arrest are.

Then, explain what the prosecution must prove.

After that, take them through the disclosure with which you have been provided and explain the significance of it.

Lastly, explain the significance of the disclosure you have not received and the investigations you expect to take place.

For example:

Rape – forensics re sperm, DNA, saliva, alcohol, drugs, fingerprints, CCTV

Conspiracy to Supply Class A – telephone analysis to include attribution of phones and cell site evidence, CCTV and other recordings, direct observations, forensics, car attribution and movement.

The importance of advising upon the likely further evidence/investigations is obvious; ***the single worst thing a defendant can do in the police station is to state something that is demonstrably untrue.***

At the end of the day the instructions they give you are a matter for them but ***do your best to put them in a position to make an informed decision*** about what they wish to say.

Obviously, you will make a note of your dealings with them in the police station...

But also remember that in the event of waiving privilege, those notes may be read by all parties.

So your advice, your judgement needs to follow a logical and defensible course...

INTERVIEW

Suspect has three choices:

- A) Answer questions
- B) Refuse to answer questions
- C) Provide a prepared statement

The choice is for the client to make.

The advice you give is a matter of your judgement and your judgement alone.

Point worth making – do not be afraid to call a colleague or indeed a barrister you trust.

We are happy to help and do so at this stage more often than you think!

A) Answering questions

Ensure the client understands that they could be asked anything;

Ask them the obvious questions you think they will be asked in interview first to get an impression of how they will fare;

After seeing what they are able to answer/not answer provide advice;

Only advise this course if the client is very clear that they want to answer all questions, that they have a good account to give and understand that further investigations will seek to clarify what they say;

B) No Comment Interview

Explain the consequences of a no comment interview to the clients;

This is preferable where the suspect is not in a position

A) to answer questions **or**

B) to provide a solid response to questions that will be raised **or**

C) You have not received adequate disclosure

INADEQUATE DISCLOSURE

In this situation, state on the interview tape the following:

That you have requested further disclosure;

It has been refused;

You are unable properly to advise as a result of improper disclosure;

The reason you have been given for refusal of disclosure requested;

A reminder that an interview is part of an investigation and should not be an ambush (if applicable);

That your client will not be answering questions;

That the position may be reviewed when proper disclosure has been provided;

There is nothing to stop you from taking a note of all questions asked in interview, taking a break in order to obtain instructions and then requesting a further interview in which you can provide a prepared statement or answer questions asked.

Particularly useful where you have a vulnerable suspect or someone who is very young and would find the process of answering questions in a pressurised situation very difficult.

C) Prepared Statement

This is an invaluable approach where the client can give a positive denial and has some explanation which s/he can give now but is not in a position to answer all questions that may be asked of him/her;

Examples include raising consent in rape cases and where client is able to explain how he knows the complainant and the circumstances in which intercourse took place.

Also useful where client has initially denied sexual intercourse (e.g. because he is married) but later goes on to admit it and states the reason for not being open at the outset.

Invaluable approach where disclosure is incomplete but the client wishes to assert denial and any other demonstrably true matters in his defence, to include details of other witnesses who may help his case or a request for CCTV.

SUMMARY

1. ELEMENTS OF OFFENCE – have this clear at outset
2. DISCLOSURE – think about what you feel you need to do your job
3. CLIENT RAPPOROT – impart confidence and respect
4. ADVICE – answer/no comment/prepared statement
5. INTERVIEW – what you can say on tape to ensure interview is fair and any adverse inference is minimised.