

The social media weapon

Sailesh Mehta & Mahesh Karu drill down on social media & serious crime



Before the current lockdown in March, criminal practitioners were anticipating the publication of CPS (Crown Prosecution Service) guidance on the use of social media and the glamorisation of gang lifestyle and the use of weapons. There may now be a longer than anticipated wait.

The guidance is intended to help build the strongest possible case for prosecution by giving practical advice on gathering robust evidence to be put before the court. Social media content showing young people carrying weapons, or designed to highlight and promote violence will be used as evidence for the prosecution. Additionally, the guidance will cover an examination of tactics used by county lines gangs in recruitment of vulnerable victims and the increase in the number of girls who become involved in gang-related offending. Though there are no official statistics relating to the prevalence of gang-related offending, figures from police recorded crime data for the year ending September 2019 showed a 7% rise in offences involving knives or pointed articles, a total of 44,771 offences, being the highest since records began in 2011. This rise in violent offending is partly attributed to the use of social media by gangs.

'All too familiar'

There is an increasing use of social media, by gangs, to threaten and taunt others about recent attacks where young people have been killed or seriously injured, said the DPP, highlighting that this behaviour is becoming 'all too familiar'. The inevitable consequence of this use of social media is that a single incident can grow into a series of offences in revenge attacks, sometimes escalating in violence, and gathering in a widening number of groups. The public nature of social media, and the wide audience able to view these 'taunts' leads, it is thought, to a perception of a greater need to retaliate, and the escalation of violence—perhaps to maintain reputation. Thus, every perceived slight not only requires an instant response, but it has to be of a greater scale. Thus one relatively minor incident, when put through the social media machine, escalates into a

larger one.

The use of evidence such as this is not an entirely new concept; social media videos have featured in gang related cases for a number of years in the form of 'drill music' videos. These videos have been said to glamorise violent attacks and gang lifestyle, often describing stabbings and shootings in great detail and provoking serious retaliation.

In 2018 five young men, members of the '1011 gang' in Ladbroke Grove, were convicted for conspiracy to commit violent disorder after being caught with baseball bats and machetes. During their trial, the jury were shown seven music videos uploaded to the video streaming website YouTube of the gang wearing balaclavas and masks, with the sound of gunshots, and lyrics promoting violence. The planned attack was said to be a retaliation to a rival gang's video which had also been posted to YouTube, though the defendants had maintained the weapons were only carried as props for another new video.

The surge of drill videos and related violent crimes has led the Metropolitan Police to ask data science researchers from University College London to assist them in developing systems to quickly analyse drill music videos and translate their lyrics to 'discern harmful content from legitimate artistic expression'. Where it can be shown that drill music, or other social media content is genuinely harmful, the prosecution will be keen to put that forward in evidence. Speaking in February 2020, the Director of Public Prosecutions (DPP), Max Hill QC, said that 'if you are part of a gang...we will make sure that the jury is in no doubt of that fact. We will bring forward evidence, for example, of social media posts that involve coded language contained in drill music', indeed the research being carried out at UCL may prove vital in doing this. The CPS will, following this, look to call expert witnesses, to give evidence of slang used in social media posts. This is akin to tactics employed by the prosecution in drugs cases, where expert evidence is used to decipher text messages sent by drug dealers offering quantities of drugs in coded language.

It should be noted that mere membership of a gang is not a criminal offence. The prosecution may face difficulties in seeking to admit social media evidence on the basis of prejudice to the jury, however, the guidance will aim to navigate these difficulties and warn of the importance of having the evidence to prove gang involvement before applying that label to offending. The fundamental aim of the prosecution, when putting gang-related evidence before the jury, will be to give context and circumstance to offending, perhaps providing motive.

In *R v Rashid (Hafedh); R v KS; R v Tshoma (Kevin)* [2019] EWCA Crim 2018, the defendants were convicted of conspiracy to possess a firearm with intent to endanger life, possession of ammunition without a certificate, and two counts of possession of an offensive weapon in a public place. Rashid, aged 23, and Tshoma, aged 28, were sentenced to 13 years imprisonment, while KS, aged 17, had not been sentenced at the time of appeal.

It was the prosecution case that the defendants were members of a gang and were keeping the weapons in a vehicle for safe-keeping until the time came when they may be used. The defence put forward on behalf of the defendants was to deny being members of any gang and having any knowledge of the firearms. The Crown relied on evidence that the defendants were members of the Beckton Boys or ACG gang which was involved in acts of tit-for-tat violence with other gangs, including evidence of music videos and interpretation evidence by an experienced officer who had dealt exclusively with Newham gangs for the previous three-and-a-half years.

The Court of Appeal held, following the cases of *Smith* [2009] 1 Cr App R 36, *Elliott* [2010] EWCA Crim 2378, *Myers v Queen* [2015] UKSC 60, and *Lewis* [2014] EWCA Crim 48, that 'gang evidence' is admissible under the Criminal Justice Act 2003 (CJA 2003), ss 98, 101(1)(d) and (3) and there can be 'no legitimate complaint' about the admission of evidence of gang association through the evidence of a police officer interpreting gang related music videos

and the use of social media, where that police officer had sufficient qualifications and experience to be seen as an expert in the field. The court stated that, had the point been taken that the officer did not have the requisite knowledge or experience, that was a matter that could have been raised in the *voir dire* which took place in trial.

It was further held that *Lewis* makes it clear that bad character evidence is admissible to prove association between defendants and association with a gang, as well as what is sometimes described as ‘pro-firearm’ and ‘anti-police’ tendencies, and that such evidence is admissible under CJA 2003, s 101(1)(d). Finally, the court concluded that the convictions were not unsafe as, although the trial judge’s direction had not focussed on the correct way in which the evidence could be used, it did make three crucial points:

- ▶ The jury had to be sure that the defendant they were considering was a gang member.
- ▶ Even if they were gang members that did not mean they were violent or that they committed the offences with which they were charged.
- ▶ The jury should not in any event be prejudiced against the defendants because they were gang members, but they might give it weight.

Director of Public Prosecutions—concerns over knife imagery shared on social media

“Getting the right evidence is absolutely crucial to make sure that we can show a jury the full circumstances of why a violent crime may have taken place and how offenders are linked in the carrying-out or the cover-up of a crime.

“Our guidance aims to make sure that police and prosecutors know what we need to prove these cases. We want to send a strong message that there is no hiding place for those committing gang-related crime....



“The term ‘gang’ is very loaded and it is vitally important to make sure that it is only used when there is evidence to prove it, whether that be an expert witness, CCTV or social media postings.

“We have to be extremely careful not to use that label when it is not justified.”

Director of Public Prosecutions, Max Hill QC, CPS news release, 21 February 2020 (<https://bit.ly/2YfZsMi>).

Comment

Recent comments from the DPP will not be universally welcomed (see box out). Some commentators feel that the law and practice have moved in a direction that tends to criminalise youngsters and particularly black youths.

The concern is that there are some cases in which innocent drill music participants and youngsters who innocently congregate in large groups will be mistaken for gangs. And that with ‘expert’ evidence in such matters, which is usually given by police officers (or ex-police officers) there will be a tendency to give disproportionate weight to such evidence.

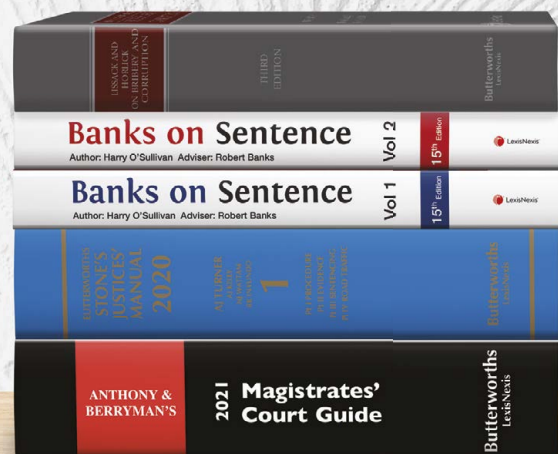
The obvious cure is judicial intervention to ensure the evidence is fair and balanced, and for judges to be more interventionist where expert evidence forms an important part of the prosecution case.

What is clear is that the DPP’s words will be put into action and the courts will see more evidence gathered from social media than before. The courts will have to ensure this evidence is used only when it is necessary. **NLJ**

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