

CHAPTER 28

**OFFENCES AGAINST PUBLIC JUSTICE**

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I. PERVERTING THE COURSE OF JUSTICE

A. ELEMENTS

28-1 It is a common law misdemeanour to pervert the course of public justice: *Vreones* [1891] 1

Q.B. 360, CCR; *Andrews* [1973] Q.B. 422, CA. The offence is committed where a person or persons:

- (a) acts or embarks upon a course of conduct,
- (b) which has a tendency to, and
- (c) is intended to pervert,
- (d) the course of public justice: *Vreones*, above (at p.369).

A positive act, whether of concealment or distortion, is required. Inaction is insufficient: *Headley* [1996] R.T.R. 173, CA (failing to respond to a summons); *Clark* [2003] EWCA Crim 991; [2003] R.T.R. 27; *Jabber* (§ 28-5).

An attempt or incitement or conspiracy to pervert the course of justice is likewise indictable: *Andrews*, above; *Sharpe and Stringer* (1938) 26 Cr. App. R. 122, CCA; *Panayiotou and Antoniadis* (1973) 57 Cr. App. R. 762, CA.

In *Cotter* [2002] EWCA Crim 1033; [2002] 2 Cr. App. R. 29, it was held that the ambit of the offence was sufficiently well-defined for the purposes of art.7 of the ECHR (§ 16-130); that article does not outlaw the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen; the offence in question had been through such a process of elucidation since *Vreones*, above. But there is a need for caution if the ambit of the offence is to be enlarged; it had to be done on a step-by-step basis, not with one large leap: *Clark*, above (at p.369); and *DPP v SK* [2016] EWHC 837 (Admin); 181 J.P. 197, DC.

## B. ACTS CAPABLE OF CONSTITUTING THE OFFENCE

### (1) Introduction

Any act or course of conduct tending and intended to interfere with the course of public justice will amount to the offence; but the offence should only be charged where there are serious aggravating features: *Sookoo* [2002] EWCA Crim 800; *The Times*, 10 April 2002; and *Kenny* [2013] EWCA Crim 1; [2013] 1 Cr. App. R. 23 (breach of restraint order should only be charged as perverting the course of justice where there are serious aggravating features). Such acts may also be contrary to specific statutory provisions or amount to contempt of court. The examples given below are not exhaustive, but represent those acts most frequently encountered in this area of the common law. See also *Selvaige* [1982] Q.B. 372 at 379, 380; (1981) 73 Cr. App. R. 333 at 339, 340, CA, and *DPP v SK*, § 28-17a. 28-2

### (2) False allegations

Conspiracy to charge a man falsely with any crime has long been indictable: *Macdaniel's case* (1755) 19 St.Tr. 745; and *Rispal* (1762) 3 Burr. 1320. It seems immaterial whether the conspiracy proceeds so far as actually indicting the person falsely accused; and if the object of the conspiracy is extortion, the truth or falsity of the charge is immaterial: *Hollingberry* (1825) 4 B. & C. 329. 28-3

The course of public justice includes the process of criminal investigation; to expose individuals, identified or not, to the risk of arrest, imprisonment pending trial and wrongful conviction and punishment by making a false allegation of crime is to prejudice the course of public justice; although the risk of an innocent person being subjected to wrongful arrest may be greater where the false allegation is capable of identifying individuals, it remains a risk even where it is not so capable if the alleged offence is described with sufficient particularity as to justify a significant police investigation; where, however, a false allegation is of such a generalised nature that there is no such risk, or no more than a theoretical risk, it may be more appropriate to prefer a charge of wasting police time, contrary to s.5(2) of the CLA 1967 (§ 28-199): *Cotter*, § 28-1. See also *Rowell* (1977) 65 Cr. App. R. 174, CA (a charge of wasting police time is scarcely an appropriate way to deal with exposing individuals to the risk of arrest, imprisonment pending trial and possible wrongful conviction); and *C* [2007] EWCA Crim 2551; [2008] Crim. L.R. 394 (rarely appropriate merely to caution someone who made a false rape allegation). Where the false allegation is made against an individual who is in fact dead, the appropriate charge is attempting to pervert the course of justice: *Brown (VJ)* [2004] EWCA Crim 744; [2004] Crim. L.R. 665, approving *Bailey* [1956] N.I. 15 at 26.

As to intent, what has to be proved is that the person making the false allegation intended that it should be taken seriously by the police; it is not necessary to prove an intention that anybody should actually be arrested, etc.: *Cotter*, above.

In A [2010] EWCA Crim 2913, it was recognised, on an appeal against sentence, that the offence extends to the retraction of a truthful allegation of crime or of truthful evidence. The court said that there is a distinct public interest in the investigation and, if appropriate, the prosecution and conviction of those who have committed crime.

### (3) Perjury

- 28-4** The fact that a person has either given false information to investigating officers or has committed perjury (denying on oath the truth of what he told the investigating officers) cannot of itself found a charge of attempting to pervert the course of public justice in relation to the prosecution he gave information about or evidence in. If perjury cannot be proved, the prosecution cannot be allowed to circumvent the statutory safeguard, as to the proof of falsity, by charging attempting to pervert: *Tsang Ping-Nam v R.* (1982) 74 Cr. App. R. 139, PC.

### (4) Concealment of evidence

- 28-5** The offence may be committed where acts are done with the intention of concealing the fact that a crime has been committed, although no proceedings in respect of it are pending or have commenced: *Sharpe and Stringer* (1938) 26 Cr. App. R. 122, CCA; and see *Wilde* [1960] Crim. L.R. 116, Assizes (Slade J) (agreement by two or more persons to conceal knowledge of criminal offence itself a criminal offence). See further the cases cited at § 28-22.

The offence is not wide enough to take in the conduct of a motorist who left the scene of an accident in order to avoid being breathalysed; it was difficult to characterise the mere removal of himself and his vehicle as the concealment of evidence: *Clark* [2003] EWCA Crim 991; [2003] R.T.R. 27. See also *Jabber* [2006] EWCA Crim 2694 (mere escape from scene of crime and subsequent denial of involvement insufficient to prove concealment).

### (5) Obstructing police

- 28-6** Deliberate and intentional action taken with a view to frustrating statutory procedures required of the police (e.g. breath test procedures) can amount to the offence (*Britton* [1973] R.T.R. 502, CA), even where the initial arrest may have been unlawful (*Spratt* [2007] 3 N.Z.L.R. 810, NZCA).

### (6) Assisting offender to evade arrest

- 28-7** A person who does an act intending to assist another to evade lawful arrest, with knowledge that the other is wanted by the police as a suspect, is guilty of attempting to pervert the course of justice: *Thomas and Ferguson* (1979) 68 Cr. App. R. 275, CA.

See also the offence contrary to s.4(1) of the CLA 1967 (§ 18-61) (a disadvantage of which is that it requires proof that the person assisted committed an arrestable offence).

### (7) Abuse of police discretion

- 28-8** Police officers who corruptly receive rewards to hinder prosecutions, by not bringing offenders before the courts or by warning persons of intended prosecutions, may be charged with “conspiracy to obstruct the course of public justice”: *Hammersley* (1958) 42 Cr. App. R. 207, CCA. However, mere failure on the part of a police officer to pursue a matter with a view to prosecution is not necessarily an offence. There is an undoubted discretion in a police officer not to pursue a matter although there is clear evidence of an offence having been committed. This is certainly so in trivial cases, such as riding a bicycle at night without lights or failing to sign a driving licence. However, whether a discretion existed in any particular case is eminently a matter for a jury to decide. For a police officer to be convicted of an offence of conduct tending and intended to pervert the course of justice, it must be proved not only that there was no room for the exercise of discretion on the particular facts, but also that the defendant knew