



LIBERTAS  
CHAMBERS

# Damian Warburton

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**Year of Call:** 2010

**Damian specialises in:**

- Defence Crime
- Appellate
- Sexual Offences
- Road Traffic Offences
- Regulatory
- Professional Discipline

**Appointments & Memberships:**

- Public Access Qualified
- Fellow of the Higher Education Academy (Advance HE)
- Visiting Lecturer, University of Westminster
- Independent (non-political) Member, Bedfordshire Police and Crime Panel
- CPS Prosecution Counsel, Grade 2
- Inner Temple

**Testimonials:**

Recent feedback (five-day sexual assault trial at the Central Criminal Court): “I was extremely well represented, at no point [before or] during the trial did I feel like Damian did not understand my position... His closing speech was phenomenal. I was on trial for something I did not do, and thanks to Damian justice was served.”

**DEFENCE CRIME**

Damian came to the Bar having previously been a Senior Lecturer teaching law in universities, and, before that, a police officer. He defends in all areas of general crime, road traffic offences, and in professional discipline and regulatory.

His experience in the Crown Courts include cases of serious violence, drug cultivation and supply both on an individual level and in organised crime; robbery, theft, fraud, and burglary; weapons offences; public order and harassment offences; indecent images, and sexual offences. As an academic, Damian published regularly on criminal law issues in peer-reviewed journals.

Damian’s long academic experience in analysis and commentary on senior courts’ judgments is of particular relevance in appellate work where a result may turn on the terms of a judicial direction, or the exercise of a discretion. He drafted the grounds of appeal and written submissions in what became ***R v Russell [2020] EWCA Crim 956***, that saw the Court of Appeal reduce Russell’s sentence from five years’ imprisonment to 12 months.



Recent feedback (five-day sexual assault trial at the Central Criminal Court): *“I was extremely well represented, at no point [before or] during the trial did I feel like Damian did not understand my position... His closing speech was phenomenal. I was on trial for something I did not do, and thanks to Damian justice was served.”*

## **SEXUAL OFFENCES**

**R v S, 2022, Luton Crown Court** – ahead of what became a four-day trial on an indictment alleging sexual assault, Damian successfully resisted the Crown’s application for the complainant to give her evidence by live link. After trial, the jury acquitted.

**R v K, (ongoing), Salisbury Crown Court** - Damian represents a client facing multiple charges of making indecent images of children. Police had imposed bail conditions that prevented him from living or even visiting his home address. Damian persuaded the magistrates at first appearance that these conditions, which had persisted for many months, were unlawful. This resulted in their removal. The case continues to trial in the Crown Court.

**R v P, 2022, Cardiff Magistrates' Court** - for a client who had pleaded G to multiple charges of making indecent images of children, after showing the District Judge at a preliminary hearing why police bail conditions preventing the defendant from living at his home address were unlawful, resulting in their removal, at the later sentencing Damian's submissions that a community order was appropriate were accepted, as too that no SHPO was necessary.

**R v A, 2022, Central Criminal Court** - following a five-day trial (alone) on an indictment alleging 2 x sexual assault in which Damian had successfully applied to admit bad character evidence against the complainant (a previous false allegation), in under 90 minutes the jury returned a unanimous acquittal on both counts.

**R v S, 2022, Nottingham Crown Court** - following a G plea to an indictment putting offences of indecent images of children, and extreme pornography, after mitigation the client was sentenced to a Community Order with a rehabilitation requirement. The police had applied for a Sexual Harm Prevention Order in very broad terms. While a SHPO was plainly warranted, Damian showed that it would be unlawful for the judge to grant the no-contact prohibitions that had been proposed, and that edits to the proposed computer-use restrictions were necessary in order to ensure that the Order was proportionate.

**R v R, 2021, Luton Crown Court** - following a G plea to an indictment alleging hundreds of Category A-C moving and still indecent images of children, after Damian’s mitigation Rus received a 9-month custodial sentence, suspended for two years.

## **VIOLENCE OFFENCES**



***R v Phillips (K), (ongoing), Ipswich Crown Court*** - Damian is acting for a client indicated on counts alleging s.18 GBH, and weapons offences.

***R v McGearty, 2022, Woolwich Crown Court*** - after defending in a trial on an indictment that put counts of racially aggravated assault, simple assault, and criminal damage, the jury returned unanimous acquittals on all counts in just 35 minutes.

***R v Phillips (L), 2022, Ipswich Crown Court*** - on a G plea to a count putting possession of an offensive weapon where the particulars stated that the weapon was a knuckleduster, of which a photograph was before the court, and to a judge openly sceptical that the implement was anything else, Damian showed that it was in fact a meat tenderiser ordinarily used the defendant's work as a chef and therefore not an offensive weapon per se. This helped steer the court down the Sentencing Guideline, and to the suspension of the final sentence.

***R v Koncius, 2021, Luton Crown Court*** - to an indictment that put one count each of kidnap, robbery, and s.18 GBH, through his drafting of the Defence Case Statement, Damian succeeded in having this reduced to a single count of s.47 ABH, to which Koncius pleaded guilty, and after mitigation, a suspended sentence order was passed.

***R v South, 2021, Luton Crown Court*** - in a mitigation following a G plea to a s.47 offence, Damian persuaded the judge that inadequate CPS disclosure at the lower court (where a NG plea had been entered) justified 33% credit being allowed for the G plea at the PTPH. Time-served on a qualifying curfew was allowed, but two weeks later the prosecution brought the case back under the slip rule attempting to have disqualified the defendant's entitlement to that time-served for reason that he had been in breach of his licence for a previous offence by committing the s.47, and, having been recalled to custody, was unlawfully at large. Nothing to effect that recall had been done, and Damian's submissions on the law about how that meant the qualifying curfew time-served could not be disqualified were accepted by the judge, resulting in the prosecution's application being dismissed, preserving the defendant's entitlement to have his time-served count.

## **DRUGS OFFENCES**

***R v B, (ongoing), Woolwich Crown Court*** - Damian is acting for client indicted on six counts of supplying heroin and cocaine.

## **DISHONESTY OFFENCES**

***R v Lusiak, 2021, Aylesbury Crown Court*** - street robbery x 2; Damian successfully argued for an 18-year-old defendant to be sentenced according to the provisions that apply to child offenders. The client had been 16 at the date of the offence and at police interview, but was not charged until 26 months later, by which point he was an adult. The judge was persuaded that because of the extended delay it would be an abuse of process to sentence him



according to the adult sentencing provisions, and a final sentence of 50 days-served on a qualifying curfew plus 25 RAR days was passed.

### **PUBLIC ORDER OFFENCES**

**R v Brown, 2021, Luton Crown Court** - following the rejection by the prosecution of a basis of plea to an indictment specifying public order and bladed article offences, Damian won a Newton hearing that included cross examination over video-link of three prosecution witnesses.

### **ROAD TRAFFIC OFFENCES**

As a former Constable, Damian has first-hand experience of the policing of motoring offences, and he has a thorough, up to date knowledge of road traffic law. He accepts instructions across the full range of motoring matters, including offences such as speeding, excess alcohol/drug (including fail-to-provide offences); construction and use, and insurance and licensing matters.

**R v Marinov, 2022, Stevenage Magistrates' Court** – acquittal after trial on an excess alcohol allegation. The defendant having been charged with driving whilst over the prescribed limit, on-the-day pre-trial negotiation with the CPS persuaded the prosecutor to reduce the charge to one of being drunk-in-charge of a vehicle; it being that the defendant had been found by police, drunk, having got out of but remained with his parked car, partying in the street with some passers-by. This was all caught on council CCTV. Following the playing of the footage, and the hearing of evidence and submissions, the Justices were persuaded that, had police not intervened, there was nevertheless no realistic prospect of the defendant driving whilst still over the limit. A Defence Costs Order was granted.

**R v Walker, 2022, Birmingham Crown Court** - having not appeared in the lower court, Damian was instructed in an appeal against a conviction for a s.172 Road Traffic Act 1988 offence of failing to provide driver details. Damian persuaded the prosecutor that the vehicle in the underlying speeding offence was most probably using a cloned numberplate, meaning that to the s.172 allegation, the appellant had a complete defence of not knowing or being able to identify with reasonable means who the driver had been. As a result of this, the prosecution offered no evidence and the appeal was allowed.

**R v Cooper, 2022, Guildford Crown Court** - Damian was instructed to represent a client facing an indictment putting a single count of dangerous driving. The alleged facts were such that had the client been convicted, significant custody would have been inevitable. A year earlier the client had been prosecuted (and pleaded guilty) in respect of an excess alcohol offence arising from the same driving incident. Damian was instructed to draft an Opinion, and from that an application for a Stay on the basis that it was an abuse of process for the Crown to have moved against his client for a second time in circumstances where it could and should have brought all of its allegations in the first set of proceedings. Following those submissions being filed, the CPS discontinued the prosecution.



**R v Marcu, 2022, Horsham Magistrates' Court** - acquittal after trial on an allegation of being drunk in charge of a vehicle in which the defendant had been found by police, drunk, to be sitting in the driver's seat with the engine running and his foot on the brake. Following evidence and submissions, the Justices were persuaded that there was no realistic prospect of the defendant driving whilst over the limit. A Defence Costs Order was granted.

**R v Wells, 2021, Winchester Crown Court** - on a re-sentencing following a very early breach of a suspended sentence order, Damian persuaded the court not to order activation of that suspended sentence, but, instead to extend the Community Order requirement.

**R v Agaram Venkateswaran, 2021, Aylesbury Crown Court** - appealing a 6-month totting up disqualification following a second offence of driving without insurance, Damian successfully argued that exceptional hardship (including to the public interest) would result unless that disqualification was lifted. This was opposed by the prosecution. The court preferred the defence submissions, and the client was permitted to keep his driving licence, notwithstanding that he did so with 14 active penalty points.

**R v Cummins, 2021, Staines Magistrates' Court** - representing a young driver convicted of driving without insurance, Damian made a Special Reasons application which was opposed by the prosecution. After live evidence, the District Judge found for the defence, and granted an absolute discharge.

**R v Szabo, 2021, Oxford Magistrates' Court** - for an HGV driver facing a six-month s.35 RTOA 1988 totting-up disqualification, but who did not have evidence of exceptional hardship to rely upon, Damian persuaded the court to reduce the totting disqualification to 3 months for public interest reasons.

**R v Ullathorne, 2021, Chelmsford Magistrates' Court** - following its failure to make required disclosure of essential prosecution evidence, the CPS applied for an adjournment of the trial date. Damian successfully opposed this, securing the dismissal of the charge, and the award of defence costs for the client.

**R v Hopkins, 2021, Luton Magistrates' Court** - for a client who was 24 months into a 40-month disqualification on a second drink-drive offence, Damian persuaded the court to lift the disqualification early, allowing the client to lawfully drive again.

**R v Wolmor, 2021, Stratford Magistrates' Court** - on the day of trial for a client facing a charge of driving without valid insurance cover, despite that the necessary prosecution witness was present at court, Damian persuaded the prosecutor to offer no evidence, resulting in the dismissal of the charge, and the award of defence costs for the client.





**R v Cole, 2021, Stratford Magistrates' Court** - to a charge of an offence contrary to s.172 Road Traffic Act 1988, following submission of the Defence Case Statement that Damian drafted, the Crown Prosecution Service discontinued the prosecution.

## **PROFESSIONAL DISCIPLINE**

Damian has a comprehensive knowledge of the professional standards required in policing, and the law and policies applicable to the discrete areas of police work, and accepts instructions to represent police officers facing misconduct allegations.

## **CIVIL LITIGATION**

Instructions are welcome on contentious issues in the law of contract (including disputes over goods or services) or the law of tort (including negligence, trespass, nuisance, occupiers' liability). Damian has successfully represented both claimants and defendants in cases of breach of contract on Consumer Rights Act 2015 cases concerning goods and services; including on applications to strike out claims or defences, and for summary judgment. In tort, a recent example includes success after trial representing the claimant in a neighbour noise-dispute brought in the tort of nuisance, and multiple successful trials on civil liability claims arising from road traffic collisions.

Damian is direct access qualified, although, like most barristers, he does not accept instructions to conduct litigation.

All enquiries must first be addressed to the clerks.

## **Academic Qualifications:**

LLB (Hons), LL.M, MSc

## **Publications:**

Warburton D, Adverse Inferences from Silence, and Negligent Legal Advice – R v Good [2016] EWCA Crim 1054, Journal of Criminal Law, 2017, Vol. 81.1, 13-17

Warburton D, Lies of the Accused and the Lucas Direction – R v Murray [2016] EWCA Crim 1051, Journal of Criminal Law, 2016, Vol. 80.6, 396-399

Warburton D, Arguments for Excluding a Co-Accused's Guilty Plea and the s.78 'Duty' – R v O'Brien [2016] EWCA Crim 678, Journal of Criminal Law, 2016, Vol. 80.5, 294-299

Warburton D, Conspiracy and Polygamy – R v Bala and Ors [2016] EWCA Crim 560, Journal of Criminal Law, 2016, Vol. 80.4, 226-234



Warburton D, Secondary Participation in Crime – R v Jogee [2016] UKSC 8; Ruddock v The Queen [2016] UKPC 7, Journal of Criminal Law, 2016, Vol. 80.3, 160-165

Warburton D, The Doctrine of Incapability and the Emperor's New Clothes, a protected defendant or non-existent offences?, Journal of Criminal Law, 2014, Vol. 78.3, 226-249

Warburton D, Book Review: 'Hooper and Ormerod (eds.): Blackstone's Criminal Practice 2014, 24th edition, Oxford University Press', in: Counsel, LexisNexis, May 2014, 30

Warburton D, Intoxication and Consent in Sexual Offences – R v Kamki [2013] EWCA Crim 2335, Journal of Criminal Law, 2014, Vol. 78.3, 207-210

Warburton D, Murder; whether secondary liability by joint enterprise arises in circumstances of mutual conflict between defendants – R v Gnango [2010] EWCA Crim 1691, Journal of Criminal Law, 2011, Vol. 75.6, 457- 462

Warburton D, Risk of Duplicity on Indictments for Causing or Inciting a Child under 13 to Engage in Sexual Activity – R v Grout [2011] EWCA Crim 299, Journal of Criminal Law, 2011, Vol. 75.4, 268-272

Warburton D and Lewis T, Opinion evidence; admissibility of ad hoc voice recognition evidence – R v Flynn & Anor [2008] EWCA Crim 970, International Journal of Evidence and Proof, 2009, Vol. 13.1, 50-57

Warburton D (editor.), Key Statutes: Criminal Law, Routledge, ISBN 978-0340972380

Warburton D, Terrorism: Jurisdictional Scope of the Terrorism Act 2000 – R v F [2007] EWCA Crim 243, Journal of Criminal Law, 2007, Vol. 71.6, 486-488

Warburton D, Kidnap: Extent offence can be committed by fraud – R v Hendy-Freegard [2007] EWCA Crim 1236, Journal of Criminal Law, 2007, Vol. 71.6, 484-486

Warburton D, Rape, Capacity to consent to sexual activity when drunk – R v Bree [2007] EWCA Crim 804, Journal of Criminal Law, 2007, Vol. 71.5, 394-396

Warburton D, Murder: Diminished Responsibility: Fresh evidence – R v Latus [2006] EWCA Crim 3187, Journal of Criminal Law, 2007, Vol. 71.2, 130-133

Warburton D, Rape; Consent; HIV – R v EB [2006] EWCA Crim 2945, Journal of Criminal Law, 2007, Vol. 71.2, 116-118

Warburton D, Book Review: 'Rivlin: Understanding the Law, 4th edition, 2004, Oxford University Press', in: Journal of Criminal Law, 2006, Vol. 70.6, 550-551

Warburton D, Smoking out the Health Bill – Don't hold your breath!, Journal of Criminal Law, 2006, Vol. 70.4, 322-329



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Warburton D, Provocation: Objective Test; Precedent – R v James and Karimi [2006] EWCA Crim 14, Journal of Criminal Law, 2006, Vol. 70.3, 203-210

Warburton D, Provocation: Objective Test; Precedent – R v (Faqir) Mohammed [2005] EWCA Crim 1880, Journal of Criminal Law, 2006, Vol. 70.2, 121-126

Warburton D, Armed Response? – the case for resisting calls to arm the service, Police Review, Jane's Information Group, 20th January 2006, 24-25

Warburton D, All Change? The future of the service and police independence, Police Review, Jane's Information Group, 7th October 2005, 32-33

Warburton D, Confidentiality and HIV: ethical issues in the care of patients with HIV, British Journal of Hospital Medicine, 2005, Vol. 66.9, 525-534

Warburton D, Book Review: 'Cawthorne: The Strange Laws of Old England, 2004, BCA', in: Journal of Criminal Law, 2005, Vol. 69.4, 361-362

Warburton D, A Right to Die?, Police Review, Jane's Information Group, 8th Oct. 2004, 26-27

Warburton D, Drawing the Thin Blue Line – The reality of who controls the police, The Police Journal, Vol. 77.2, 2004, 135-144

Warburton D, Why it would be wrong to follow Canada in having a single offence of Unlawful Sexual Assault, Journal of Criminal Law, 2004, Vol. 68.6, 533-543

Warburton D, A critical review of English Law in respect of criminalising blameworthy behavior by HIV+ individuals, Journal of Criminal Law, 2004, Vol. 68.1, 55-77

Warburton D, Taking Aim ~ Is it yet time to fully arm the British Bobby?, On The Bell: The Journal of the Emergency Services, Vol. 12.4, Gateacre Press 2003, 13-19