



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, Level 1
- 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 SW, 2023, Aylesbury Crown Court - defended in a sexual assault case; successful half time submission. Defendant acquitted.

R v CS, 2022, Luton Crown Court – defended in a sexual assault case; successful resistance of Crown application for live link for the complainant. 4-day trial; Defendant acquitted.

R v RP, 2022, Cardiff Magistrates' Court – defended in a G plea to multiple IIOC; first hearing: persuaded the District Judge to lift police bail conditions as being unlawful; at the later sentencing persuaded the District Judge that no SHPO was necessary.

R v MA, 2022, Central Criminal Court – defended 2 x sexual assault; five-day trial; successful bad character application against the complainant (previous false allegation); jury unanimously acquitted in under 90 minutes on both counts.

R v MS, 2022, Nottingham Crown Court – defended in a G plea to multiple counts of IIOC and extreme pornography. Successfully resisted SHPO no-contact prohibitions asked for by police.

R v R, 2021, Luton Crown Court – defended in a G plea to three counts of hundreds of Cat. A-C moving and still IIOC. 9-month SSO.

VIOLENT OFFENCES & DRUGS OFFENCES

R v P (ongoing), Ipswich Crown Court – defending a client indicated on counts alleging s.18 GBH, and weapons offences.

R v Adams (2023), Ipswich Crown Court – Assaulting an emergency worker: in circumstances where the defendant's use of violence upon a police officer was accepted, following service of the Defence Statement that relied upon self-defence, the CPS discontinued the prosecution.

R v J, 2023, Luton Crown Court - prosecuting in a case of possession of a prohibited weapon (sawn off shotgun).

R v F; and R v L, 2023, Luton Crown Court - prosecuting in a double handed drug dealing, money laundering, and weapons offence.



R v Adams (2023), Ipswich Crown Court – defending in a case of assault emergency worker in which the defendant accepted using violence upon a police officer. Following service of the DCS that put self-defence, the CPS offered no evidence. Defendant acquitted.

R v B, 2022, Woolwich Crown Court – defended on a G plea to six counts of supplying heroin and cocaine.

R v McGearty, 2022, Woolwich Crown Court – defended against racially aggravated assault, simple assault, and criminal damage. Three day trial; unanimous acquittals on all counts in just 35 minutes.

R v Phillips (L), 2022, Ipswich Crown Court – defended in a G plea to possession of an offensive weapon; successfully showed it not to be an offensive weapon per se, as alleged, steering the court down the Sentencing Guideline, and to an eventual SSO.

R v Koncius, 2021, Luton Crown Court – defended on an indictment that put kidnap, robbery, and s.18 GBH. Via the DCS and a basis, reduced this to a sole count of s.47 ABH, and to an eventual SSO.

R v South, 2021, Luton Crown Court – full credit for G plea at the PTPH. Later, successfully resisted the Crown's application to have time remanded disqualified as the defendant had been liable for recall. Remand time preserved as counting.

DISHONESTY OFFENCES

R v L, 2021, Aylesbury Crown Court – G plea to street robbery x 2 when aged 16, not charged until 26 months later when over 18; successfully argued for sentencing as a child.

PUBLIC ORDER OFFENCES

R v Brown, 2021, Luton Crown Court – won a *Newton* hearing in a public order and bladed article case.

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.

All of the below were defence cases:



R v Ghandi, 2022, Bexley Magistrates' Court – excess alcohol allegation. Following submissions on flaws in the prosecution case, the CPS offered no evidence; Defendant acquitted. Defence Costs Order granted.

R v Thompson, 2022, Derby Crown Court – appeal against conviction in a dangerous driving (previous counsel represented at trial). The Crown's evidence came from two police officers who, coincidentally, had been driving in opposite directions when the client made an overtake later alleged to have been dangerous. Court persuaded this was careless, not dangerous; to that extent appeal allowed, with defence costs. Disqualification and extended test quashed; 3 penalty points substituted.

R v Marinov, 2022, Stevenage Magistrates' Court – acquittal after trial on an excess alcohol allegation. Defence Costs Order granted.

R v Walker, 2022, Birmingham Crown Court – having not appeared in the lower court, instructed in an appeal against a conviction (s.172). Appeal successful. Defendant acquitted. Defence Costs Order granted.

R v Cooper, 2022, Guildford Crown Court – instructed to in a dangerous driving in which, had the client been convicted, significant custody would have been inevitable. Drafted an Opinion, and from that an application for a Stay for abuse of process. Following that being served, the CPS offered no evidence. Defendant acquitted. Defence Costs Order granted.

R v Marcu, 2022, Horsham Magistrates' Court – drunk in charge; acquittal after trial. Defence Costs Order granted.

R v Wells, 2021, Winchester Crown Court – in a re-sentencing on a very early breach of an SSO, persuaded the court not to order activation.

R v Agaram Venkateswaran, 2021, Aylesbury Crown Court – appealing a 6-month totting disqualification after a second no insurance offence, successfully argued exceptional hardship (including to the public interest). Defendant permitted to keep his driving licence with 14 active penalty points.

R v Cummins, 2021, Staines Magistrates' Court – young driver convicted of no insurance. Special Reasons application successful. Absolute discharge granted.

R v Szabo, 2021, Oxford Magistrates' Court – for an HGV driver facing a six-month totting disqualification, but without evidence of exceptional hardship, persuaded the court to reduce the totting disqualification to 3 months for public interest reasons.

R v Ullathorne, 2021, Chelmsford Magistrates' Court – drug drive; dismissal of the charge on the day of trial for reason of prosecution disclosure failures. Defence Costs Order granted.



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R v Hopkins, 2021, Luton Magistrates' Court – for a client 24 months into a 40-month disqualification on a second drink-drive offence, persuaded the court to lift the disqualification early, allowing the client the return of his driving licence.

R v Wolmor, 2021, Stratford Magistrates' Court – no insurance. Acquittal on day of trial. Defence Costs Order granted.

R v Cole, 2021, Stratford Magistrates' Court – s.172 Road Traffic Act 1988. Following submission of the Defence Case Statement, the prosecution offered no evidence. Defence Costs Order granted.

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



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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

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