

50/BW/S:586/05



3rd March 2005

Inspector Harrison
Criminal Justice Unit
Police Station
Camborne

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Our Ref:

Yr. Ref:

Dear Inspector Harrison,

Re: 'Darkie' Day – advice

I enclose a file that has been sent to me by Sgt 4077 Robin Hogg of Wadebridge police station concerning the above. The file contains Sgt Hogg's MG5, part of an article from what appears to be a book entitled 'True Brits' in a section entitled 'Of Coloureds and Cornishmen', and (in duplicate) video footage of the events of Boxing Day 2004 and New Year's Day 2005.

No persons have been arrested, seen as voluntary attenders, or interviewed in connection with the activities described in the video footage. I make no criticism of that; the submission of the papers to me followed discussion between Sgt Hogg and myself in January, so that I could form a view of what was then known to the police.

I have studied the material supplied to me, which has included watching the video footage. I have considered the offences suggested in the Form MG5 and applied the Code for Crown Prosecutors. As you know, if I review a case, I have to apply the evidential test set out in the Code at paragraphs 5.2 – 5.5. This test has to be satisfied before moving on to apply the public interest test, and of course if the case does not pass the evidential stage, it must not go ahead no matter how important or serious it may be. Whilst I have clearly not been presented with anything approaching a full file of evidence, I hope you will agree that it would be helpful for me to express my advice in terms of the Code evidential test. Whether, thereafter, you choose to investigate the matter more thoroughly is a matter for you to decide. I should make it clear, for the sake of clarity, that my advice is based solely upon the evidence presented to me by Sgt Hogg and described above.

Racially aggravated Section 5:

There is no evidence on the police papers that a person or persons has/have been harassed, alarmed or distressed by the spectacle of a group of people walking through the streets of Padstow dressed in costume with blackened faces and to a musical accompaniment, nor that any were likely to be so affected.

Crown Prosecution Service

NOT REVIEWED

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The people in the parade appear to be generally peaceful, and do not, so far as I can tell, indulge in threatening, abusive or insulting words or behaviour, or disorderly behaviour, either in general or towards any ethnic minority.

I have paid particular attention to whether there is any demonstration towards anyone of any hostility based on anyone's membership (or presumed membership) of a racial group. On the material shown to me I can find no evidence of this.

Stirring up racial hatred:

It is an offence to use threatening, abusive or insulting words or behaviour if the perpetrator either intends thereby to stir up racial hatred, or where racial hatred is likely to be stirred up. My comments above apply but in addition I have seen no evidence of an intention to stir up racial hatred, or any likelihood of it being stirred up. Crucially, 'racial hatred' is hatred against a group of persons defined by reference to colour, race, nationality or ethnic or national origins. None of the actions of those parading seem to have had or be likely to have the effect of causing this.

Public nuisance:

This is an offence with ancient roots and was defined as 'such an inconvenient or troublesome offence as annoys the community in general, and not a few individuals only, and is indictable as a misdemeanour'. It is now an either-way offence. The community of Padstow does not appear to be annoyed by the custom described on this file; on the contrary it seems on the evidence contained in the video to rather enjoy it. I have seen no evidence that the wider community is annoyed by what has taken place in Padstow. While it is difficult to infer the state of opinion from national and local media, the general tenor of such coverage to date has been that greater annoyance is shown towards those who would seek to ban rather than permit this rather eccentric custom. None of the case law applicable to public nuisance appears to be apt, or suggestive that this sort of behaviour has been held to be unlawful.

Outraging public decency:

This is an offence triable only on indictment that relates to exposure of the person or to engage in or simulate a sexual act, or to do any act that in fact outrages public decency. The case law on this topic leaves me in no doubt that this offence has no place in dealing with the subject matter of this file.

Unlawful street collections:

The collecting for money shown in the video appears to be for Padstow Church. There is insufficient material on the file to enable me to comment on whether an offence might have been committed.

Licensed premises offences:

There is no material on the file, which would enable me to comment on this.

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In summary, I have concluded that the file does not contain sufficient evidence which would lead me to conclude that the evidential test was passed in relation to any offence. For the avoidance of doubt, I would emphasise that my advice is based upon the evidential test under the Code for Crown Prosecutors applied to the evidence gathered. There being no apparent realistic prospect of a conviction of any person for an offence upon that basis, the public interest test, and any of the factors set out in the Code applicable to that test, whether for or against prosecution, do not arise for consideration.

I return the file.

Yours sincerely,



s.40(2)