

# Keith Borer Consultants

Forensic expertise – *when you need it*

September 2018

## Is it a torch, lighter... or stun gun?

One of the latest gimmicks in novelty devices has seen the emergence of the plasma cigarette lighter. This small, hand-held item looks like a normal flip lighter, but uses a plasma discharge across two terminals to create the 'flame'. They are freely available on the internet.

Plasma, the fourth fundamental state of matter (along with gases, solids and liquids), is produced as a powerful beam of energy that can light your cigar.

The problem is that the lighter uses two 'prongs' much like a stun gun and the suspect was charged with having a disguised weapon under the Firearms Act. ***But is the plasma lighter capable of being a stun gun?*** In this case, our Firearms expert, Alan Henderson, said not.



His main arguments were two-fold around the construction of the device and how the plasma discharge was designed to occur. Additionally, the lighter top, it was argued, acted as a safety barrier to the plasma discharge. The Court accepted this was not a stun gun and the case was dropped.

**The torch/stun gun combination** has sparked a similar debate, but for a different reason. These items are classified as stun guns, but the key issue is whether or not they are also a disguised weapon. Section 5 (1A) (a) of the Firearms Act 1968, (Article 45(2)(a) in Northern Ireland), was introduced to control firearms disguised as another item. But are torch/stun gun combinations necessarily correctly classified as such? Depending on



design features, we have successfully argued that many of these devices can be categorised as 'dual-purpose' and thus fall under general prohibition contrary to 5(1)(b), (or Article 45(1)(f) in Northern Ireland).

Although this seems academic, the difference in potential outcome is considerable, as a charge under 5 (1A) (a) or 45 (2) (a) carries minimum mandatory sentencing.



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### Indecent Indictments

KBC's digital forensic team have been successful in challenging evidence in a number of recent Child Pornography cases. Steve Guest, digital forensic investigator, summarises his findings:

"We've had a series of cases where the evidence as presented has been insufficient to prove the offence. In each case, the prosecution alleged the presence of a number of indecent images but did not appear to give sufficient consideration as to where the images were stored, whether it could be shown they had been deliberately downloaded, or whether the user would have knowledge of them being present."

Mr Guest's examinations found that many of the images, although present on the device, could not be shown to be there with the knowledge of, or to be accessible by, the user. Detailed technical examination coupled with extensive experience of cases of this sort cast considerable doubt as to whether the offences had actually occurred.

Furthermore, in two of the cases, there were a number of images which, in our assessment, were classified incorrectly. The subjects in the images either appeared older than the legislative minimum, or the composition of the photographs did not have a sexual focus. Both of these cases were discontinued.

The legislation in different jurisdictions differs in detail but, in relation to cases in which possession is alleged, the principles are basically the same. The decision as to whether any images comprise Child Pornography lies wholly within the purview of the Court, however, our experts are able to offer assistance to counsel and courts on matters related to the nature and classification of alleged images, based on experience in the field.



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