Neutral Citation Number: [2013] EWHC 4627 (Admin)

CO/3854/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Wednesday, 30th July 2013

B e f o r e:

MR JUSTICE SAUNDERS

MR JUSTICE HICKINBOTTOM

-

Between:

THE QUEEN ON THE APPLICATION OF TIBOR KRACHER

Claimant

v

LEICESTER MAGISTRATES' COURT

Defendant

CROWN PROSECUTION SERVICE

Interested Party

Tape Transcript of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr Clarke appeared on behalf of the **Claimant**
The Defendant did not appear and was not represneted
Mr Boyd appeared on behalf of the **Interested party**

J U D G M E N T
(Approved)

1. MR JUSTICE SAUNDERS: This is a renewed application for permission to apply for judicial review and the case has been listed for the hearing of the judicial review to follow on if permission is granted. Permission was refused on paper by Blake J. We give permission and we deal with the hearing as the hearing of the application itself.

2. The claimant seeks to quash the decision of the Leicester Magistrates' Court convicting him of assault and seeks an order that the case be remitted to the magistrates with a direction to acquit.

3. On 24th January 2012 the claimant was convicted of two offences. The first was an allegation of common assault on a man called Aba and the second an offence of resisting arrest arising out of the same incident. This application for judicial review only relates to the first of those convictions.

4. The incident out of which the charges arose occurred on 18th March 2011. The facts briefly were these. There was a disagreement between the claimant, who was driving a van, and the complainant, who was riding a motor bike, as to whether the complainant was blocking the road so that the claimant could not get through. Unfortunately the dispute continued onto a nearby car park behind a block of flats and the prosecution alleged that during the altercation the claimant punched the complainant on the arm and also said: "Fuck off. If you come round the back I will beat you up". Arising out of that incident the claimant was charged with common assault contrary to section 39 of the Criminal Justice Act 1988.

5. An affidavit from the chairman of the Bench setting out their conclusions on the facts and the basis of conviction has been filed which we have considered. That affidavit records that, on the evidence that they heard, the justices were not sure that a punch had been delivered but they were sure that the conduct of the claimant amounted to a threat of immediate violence when he invited the complainant to come round the back.

6. The offence of common assault can be committed in two distinct ways. One is the infliction of actual violence which should be described as a charge of assault by beating and the other should be described as an assault, meaning the threat of immediate violence, without any actual violence taking place.

7. The complaint here by the claimant is that while the summons alleged simple assault, the charge was based not on the threat but on the infliction of actual violence by a punch. It is submitted that in those circumstances it was not open for the justices to convict of assault on the basis of the threat and they should have acquitted the complainant of the charge.

8. While in the acknowledgement of service the Crown Prosecution Service who were joined as an interested party, opposed this application, the skeleton argument filed on their behalf demonstrates there is considerable agreement both as to the facts and the applicable law between the CPS and the claimant.

9. It is accepted by the Crown Prosecution Service that the case was put in the court below on the basis of the punch and not the threat to beat Aba up if he came round the back. They accept that should have been charged as assault by beating but was not. Apparently, the Crown Prosecution Service advised the police that that is how the claimant should be charged but for some reason that advice was not followed.

10. It is also accepted by the Crown Prosecution Service that in those circumstances, in the light of their findings, the justices should not have convicted. That concession is not made on the basis that the threats made could not amount to common assault but because that was not the basis of the charge or the way in which the case was put. In my judgment those are sensible concessions to have made.

11. It is common ground between the parties that the offence of common assault can be committed in two ways which amount in law to different offences, namely assault by beating and an assault by putting another in fear of immediate silence. It is not possible to charge common assault in the alternative within the same charge.

12. Quite apart from that it is important that a defendant knows the case he has to meet and the claimant contested the charge on the basis that he did not strike a blow. To convict on the basis of a threat would have required a further charge and for the justices to have considered and reached verdicts on both of the charges. Had there been two charges of common assault, on the findings of the justices they would have acquitted of the charge of assault by beating and convicted of the assault by the threat of unlawful violence. There was only one charge and that charge was put on the basis of assault by beating and the proper verdict was not guilty.

13. In their acknowledgement of service the Crown Prosecution Service opposed this application on the basis of delay. The application was not made until the 12th April. That was within the 3-month time limit but the requirement is that the application should have been made promptly. They also asserted that the claimant should have proceeded by way of Case Stated rather than by judicial review. The time limit to start such an action would have been 21 days, although the claimant could have applied for leave to state a case out of time. Instead the claimant pursued an appeal to the Crown Court and applied at the same time for judicial review. The appeal to the Crown Court was adjourned pending the outcome of this hearing.

14. In my judgment, there are considerable merits in those arguments. The matter should have been pursued by way of Case Stated. An application by way of case stated has a much shorter time limit but would have been the more appropriate course and would have allowed the court to state the facts which it found without the need for an affidavit to be filed. It would have precluded an appeal to the Crown Court but we can understand why an appeal to the Crown Court was not an ideal remedy for the claimant: He did not seek a rehearing on the facts and he was satisfied with the findings of fact made by the justices. There is no good reason why the claim should not have been made earlier - it clearly should have been.

15. In the end however, the Crown Prosecution Service have conceded that the conviction was wrong. I do not consider in those circumstances that it can be allowed to stand, it

being conceded that this was an unjust conviction. It is also arguable that part of the fault here was procedural, for which judicial review may be a suitable remedy in certain circumstances.

16. Accordingly in my judgment, the conviction should be quashed and the case remitted to the justices with a direction to acquit.

MR JUSTICE HICKINBOTTOM:

17. I agree, and would allow the appeal for the reasons given by my Lord, Saunders J. I would only add two points of my own.

18. First, while I consider it is far from fatal in this claim, I would emphasise the importance of challenges to magistrates' court convictions being by way of appeal by way of case stated, in those cases where the challenge is other than one of some procedural failure by the court below. One important practical advantage is that in an appeal by way of case stated the court below sets out the relevant facts and the process by which it arrived at its decision which is valuable, if not vital, for a proper consideration of the challenge in this court. It is not a good reason to bring judicial review proceedings merely because the 21 days for applying for a case stated has expired before any challenge is brought. The appropriate course is then to apply for a case stated out of time.

19. Second, I too consider the concessions made by Mr Boyd for the Interested Party, the Crown Prosecution Service, both with regard to the substance of the claim and as to the non-reliance on possible procedural points such as delay, as well-made. However, I would mark that it would have been more helpful if those concessions had been made at the first hearing before me on 21 March 2013, which might have resulted in this claim being determined more expeditiously.

20. Having made those points I would stress that no criticism either of Mr Boyd or Mr Clarke is to be inferred from them. They both dealt with this claim, in my view, in a most sensible and realistic manner.

21. MR BOYD: There is an application for costs under section 16 of the Prosecution of Offences Act 1985, a section which I am sure my Lords are familiar with. Given that this conviction is quashed and is to be remitted with a direction to acquit, I would respectfully submit that notwithstanding the procedural delays which again, if I am frank, were rather caused at my hand than his, that he ought to be given costs out of Central Funds.

22 MR JUSTICE SAUNDERS: We will make that order.