

JERSEY / JUDGMENT

Bisson v AG [2023] JRC 212 (09 November 2023)

[2023] JRC 212

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JUDGMENT

THE COMMISSIONER: 1. This is an appeal by Erin Bisson ("the Appellant") against conviction and sentence in respect of a charge in the following terms: "On 23 March 2022, at the Weighbridge, Erin Bisson used words that were threatening or abusive within the hearing or sight of another person likely to be caused alarm or distress by the words or behaviour used, contrary to Article 2(a) of the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008." 2. The appeal was heard on 20 April 2023, with a further hearing taking place on 13 September 2023. 3. It was alleged that the Appellant had called a Mr Tostevin ("the Complainant") a "nonce". The Appellant was convicted on 18 November 2022 following a trial before the Magistrate. Following conviction, the Appellant was sentenced on 23 November 2022 to a £300 fine (or 10 days imprisonment in default) and a two year restraining order was imposed. The Appellant was also ordered to pay £400 towards the Crown's costs. 4. The Appellant's notice of appeal against conviction raised a number of matters: (i) Failure by the police to fully investigate the circumstances or to deal with threatening behaviour by the Complainant; (ii) The Relief Magistrate, David Le Cornu, misgendering the Appellant on 17 August 2023; (iii) The Assistant Magistrate, Peter Harris, being conflicted having previously misgendered the Appellant; (iv) Uncertainty as to the details of the charge; (v) The trial being "unfair and an injustice", the Magistrate having allowed the Complainant to refer to the Appellant as a male; (vi) The failure by the Magistrate to take into account video footage of the Complainant threatening the Appellant and a Mr Goguelin; (vii) Failure by the court to summon Mr Goguelin as a witness. 5. The Appellant's notice of appeal against sentence alleged that it was manifestly excessive and that the terms of the restraining order were such as to make compliance impossible. 6. Ms Bisson's first appearance before the Magistrate's Court in respect of this charge was on 17 August 2022, the Relief Magistrate, David Le Cornu, presiding. The charge was read to the Appellant, she pleaded not guilty and she was remanded on bail, with a condition that she did not contact the Complainant, for a directions hearing on 11 October 2022. At that stage the Appellant was not represented. 7. On 11 October 2022, the Appellant appeared again before the Magistrate's Court, Assistant Magistrate Peter Harris presiding, and on this occasion the Appellant was represented by Advocate Heidi Heath. The Assistant Magistrate was advised that the prosecution would be calling one witness, namely the Complainant, and Advocate Heath advised that the Appellant and Mr Goguelin would be

giving evidence for the defence. The Assistant Magistrate was also advised that there were two short video clips that would be played to the court, one from the Complainant's mobile phone and the other from that of Mr Goguelin . Advocate Heath identified a potential issue in relation to the date of the offence given that, whilst the charge sheet referred to the offence being committed on 23 March 2022, some of the witness statements referred to incidents taking place between the Complainant and the Appellant on 24, 25, 26 and 27 March. The Assistant Magistrate remanded the Appellant on bail for a trial to take place on 18 November 2022. 8. On 18 November 2022, the trial commenced before the Magistrate, Mrs Bridget Shaw. When prosecution counsel opened their case, they advised the Magistrate that they understood that Mr Goguelin , who was on the witness billet for the defence, was no longer giving evidence. They went on to say that there was some video footage that was on Mr Goguelin's mobile phone, which he had sent to the Appellant, and that they understood that the defence still wished to adduce that evidence. However, they advised the Magistrate that it was not clear as to how that could be done given that it was not from the Appellant's phone and therefore it was not possible to confirm the provenance of the clip. 9. In response, Advocate Heath explained that on the night of the incident Mr Goguelin and the Appellant were sitting together on a bench outside the premises known as The Square, at the Weighbridge, facing the public taxi rank and that Mr Goguelin had recorded the Complainant coming towards them and behaving in a threatening way. Advocate Heath suggested that the video evidence was highly relevant given that it showed that the Complainant had approached the Appellant and Mr Goguelin and had threatened, first Mr Goguelin and then the Appellant. She outlined the defence version of the sequence of event as follows: " It started with Mr Goguelin taunting Mr Tostevin..... Mr Tostevin bit, walked across the road, threatened Mr Goguelin and then was threatening towards Ms Bisson. So, it is the defence position that he was actually threatening and abusive and not our client. Mr Goguelin has been dealt with separately at a Parish Hall enquiry in relation to his behaviour that night ". 10. Prosecution counsel explained that it was the prosecution's case that the offending took place at around 2245 to 2300 on 23 March 2022, and that Mr Goguelin's video evidence related to a separate incident some hours later, in the early hours of 24 March 2022. Advocate Heath suggested that even if the video was of an event later in the evening, it was still relevant insofar as someone who was allegedly threatened and frightened was seemingly able, just hours later, to approach the Appellant and Mr Goguelin and behave in this manner. She explained that relations between the Complainant and the Appellant had been difficult for some considerable time. She went on to say that the video evidence was of an incident that happened at 0040 and that she had prepared her case on the basis that the Complainant's statement had referred to incidents at 2245, 2307, 2332, 2334 and then 0030 to 0040. However, the prosecution were now simply relying on the Appellant's use of the word " nonce " at a time between 2245 and 2300 on 22 March. Advocate Heath confirmed that the defence case was that the real trouble that night was between Mr Goguelin and the Complainant and not between the Appellant and the Complainant, and that the video evidence would support that. She did however accept that the video would not in itself have any bearing on the prosecution case as to the words that were used by the Appellant earlier in the evening. The Magistrate suggested that this might raise the issue of a need for a bad character application given that this was an allegation of reprehensible behaviour by a prosecution witness. There was

a brief adjournment to enable the prosecution and defence to discuss whether or not a bad character application was required, and when the Court resumed prosecution counsel indicated that, having discussed the matter, counsel had agreed an admission in relation to the video and that only a part of the video was going to be played. Accordingly, no bad character application was required. 11. In opening the prosecution case, counsel submitted, correctly in our view, that there were four elements that needed to be proved by the Crown: (i) that threatening or abusive words were used; (ii) that those words were used by the Appellant; (iii) that they were within the hearing or sight of another person; and (iv) that the other person was likely to be caused alarm or distress by those words. 12. Counsel accepted that the burden rested upon the Crown to prove to the requisite standard that the Appellant was guilty. It was further submitted that if, having heard the evidence, the Magistrate was satisfied that "nonce" was an abusive word, that it was the Appellant that had called the Complainant "nonce", that the Complainant was within hearing when the Appellant used those words or the Complainant heard those words, and lastly, that the Complainant was likely to be caused alarm or distress by those words, then she should convict the Appellant of the offence. 13. The Complainant was called to give evidence and in the course of his evidence he stated that at around 1045 he was sitting in the queue of taxis reading a book with his window open and heard someone calling "nonce". He said that this went on for quite some time, but that at that stage he did not know that it was being directed to him. However, he said that he then heard the name being called again and when he looked over to his right he saw the Appellant, with a young male, shouting directly at him, "nonce". He said that the word was being shouted loud enough for him to hear it and he was about twenty feet away from the bench on which the Appellant was sitting. He said that he recognised the Appellant. He said that he continued to move up the line of taxis and eventually someone got into his taxi and he drove off. When asked whether he knew what the word "nonce" meant he replied "Well, to be honest with you, at the time, it's a terminology I haven't heard a lot, I thought it was something to do with an informer in a prison, at the time. I have since learned that it's a derogatory term for somebody that interferes with children". He went on to say that at the time being called a "nonce" made him "angry and upset". 14. When cross-examined the Complainant insisted, when it was put to him that only one person used the word, that two individuals were shouting it. He denied that there was "a lot of bad blood" between him and the Appellant, but accepted that there had been litigation between the Jersey Taxi Drivers' Association ("JTDA"), of which he was a committee member, and the Appellant, and that he was involved in one of the cases where the Appellant had tried to take the JTDA to a tribunal. He denied having any personal resentment towards the Appellant, but said that "I found this person to be very offensive towards not only me, but to a lot of other taxi drivers, and also the general public, and that's why this person's licence was revoked in the end by the DVS". When it was put to him that at the time, given that he thought the word "nonce" meant an informant in prison, he did not consider it derogatory, he responded "I did because I'm not an informer at prison, and I've never been to prison, and I don't know why I was being called this name". 15. The Complainant accepted that later in the evening when he returned to the taxi rank he got out of his taxi and approached the two individuals who, he said, were continuing to call him names, stating "I tried to tell that person, I don't know who it was, and Erin, to stop what they were doing, and that's what happened... because the police at that

time were not getting involved ". He said " I was trying to get them to stop calling me names, stop trying to harass me and intimidate me, and I was telling them, yes that -- why the -- nobody would like somebody to be at their place of work, calling them names and trying to intimidate them. And yes, I tried to get them to stop ". He accepted that he said to Mr Goguelin " Pack it in, grow up, otherwise you're going to find yourself in a lot of trouble ". However, he said " I wasn't threatening, I was telling them what would happen if they carried on, because I had got the police - I'd already called the police and I just thought that they would get into a lot of trouble if they carried on harassing me ". 16. The Complainant was the only witness called by the prosecution to give live evidence. The next witness was the Appellant. She agreed that she and Mr Goguelin were sitting on the bench outside The Square that night, but she denied that she and Mr Goguelin were shouting " nonce " towards the Complainant. She said " I did not use any words that even resemble the word "nonce". I'm not responsible for any other person's behaviour ". In relation to the Complainant's presence, she stated " I noticed among the cars at the taxi rank... who I felt uncomfortable with this person around me for several years, even tried to take litigation, even reported several abusive comments and behaviour by himself and his brother, on more than one occasion. Basically, I felt incredibly intimidated. I stopped reporting these events to the police because the police don't deal with these incidents towards myself..." . 17. When cross-examined the Appellant continued to deny that she had used the word " nonce " that evening and added " Someone else's behaviour is not my responsibility" . Prosecution counsel asked her what she heard that evening and she responded " Sorry, I can't answer your question. I can only talk for my own behaviour... I've got no reason to talk about anyone 's behaviour. I'm talking about my own behaviour, seeing as I'm the one standing in court, and you're asking me questions about my behaviour ". She accepted that she " sat there mimicking a cuckoo. Seeing as his witnesses approached me on several occasions, pointing to his temple with his finger as if I'm mental" . The test on appeal 18. The relevant test in respect of an appeal against conviction by the Magistrate's Court is that set out in *Graham v AG*

[2013] JRC 014 , which considered the appeal provisions in the Magistrate's Court (Jersey) Law 1949 , which have essentially been replicated in the Criminal Procedure (Jersey) Law 2018 . The key passage is an extract from the decision in *Rushton v AG* (Royal Court October 16th 1989 Unreported) where the Court said: "The Court of course has on many occasions said that its duty in looking at an appeal on conviction from the Magistrate below is to examine the transcripts to see if there is evidence on which the Magistrate concerned could properly have come to the decision he did. If there was that evidence, then even though the court might not necessarily come to the same decision, the Court does not lightly interfere with it. The Court has to be satisfied that there was insufficient evidence [for] the Magistrate to have come to the decision he did, or that he drew the wrong conclusion and inferences from the evidence before him." The grounds of appeal The missing witness 19. A major focus of the Appellant's address to us was the failure to call Mr Goguelin as a defence witness. She suggested that his evidence would have been relevant for two purposes, namely admission of his video recording and the fact that, according to the Complainant, it was Mr Goguelin who was the individual misbehaving. At the conclusion

of the hearing of the appeal, the Court was troubled by the Appellant's inability to explain why an adjournment had not been sought on the day of the trial in order to ensure that Mr Goguelin could give evidence. Having explained our concern to the Appellant, the Appellant agreed to waive privilege to the extent necessary to enable Advocate Heath to swear an affidavit explaining why an adjournment was not sought. Advocate Heath duly swore the affidavit. 20. Advocate Heath's affidavit stated that the Appellant had advised Advocate Heath on 22 September 2022 that she had spoken with Mr Goguelin, and that he had confirmed that he said the word "nonce" and that he was happy to be a witness and was happy to have his video footage produced in Court. A number of attempts were made by Advocate Heath's office to make contact with Mr Goguelin and, whilst some contact was made, it proved impossible to arrange a meeting with him or to get him to confirm that he would attend Court to give evidence. Advocate Heath was therefore in a position where she was not going to have the chance to meet Mr Goguelin before the trial, would not have the chance to take a witness proof from him and would not know what he was going to say in advance of the hearing. It appeared that he was unwilling to attend the trial to give evidence on behalf of the Appellant. Advocate Heath concluded that there was a risk that he would be a hostile witness and unhelpful to the defence. She confirmed that she met with the Appellant before the Court hearing on 18 November 2022 and that the Appellant confirmed that in the circumstances she did not want to compel Mr Goguelin to give evidence. According to Advocate Heath this was a sensible decision, and it was for that reason that no application was made to adjourn the trial for Mr Goguelin to give evidence. 21. Following receipt of Advocate Heath's affidavit, we gave the Appellant the opportunity, at a further short hearing, to address us, should she so wish, on the contents of the affidavit. The hearing took place on 13 September. In order to avoid further delay, the Court was differently constituted in that Jurat Crill replaced Jurat Hughes, who was out of the island. However, Jurat Hughes was fully briefed as to what was said at that hearing upon his return. At that hearing, the Appellant suggested that the onus was, in her view, on the Crown to call witnesses, not the defence, and accordingly they or the police should have ensured that Mr Goguelin gave evidence. We regard that suggestion as wholly misconceived and, whilst it indicates that the Appellant may have confused the respective roles of the prosecution and defence in a criminal trial, we note that she was legally represented throughout the proceedings in the Magistrate's Court. Regrettably the Appellant displayed a degree of contempt for the Court and the Court process during that hearing, to the extent that it had to be brought to a close. We are however satisfied that the Appellant was given the opportunity to say everything that could be said in support of her appeal and her behaviour has not influenced us in our approach to the appeal. 22. In relation to the failure of Mr Goguelin to give evidence, the Crown referred us to the decision of the Royal Court in *Mohammed Ronnie Khan v AG* [2020] JRC 128, where the Court considered the principles to be applied when considering applications for the reception of fresh evidence on appeal from the Royal Court. Although there is no similar application before us, some of the issues discussed in that decision may be relevant to this matter. 23. The Royal Court in *Khan* considered that the same test would be applied on

appeals from the Magistrate's Court to the Royal Court. The principles to be applied were set out in a decision of the Jersey Court of Appeal, *Hume v AG*

[2006] JCA 162 : (i) the evidence sought to be adduced should have been unavailable at the trial; (ii) that evidence had to be relevant; (iii) it had to be capable of belief; and (iv) if the evidence has met these criteria the Court would go on to consider whether there might have been a reasonable doubt in the minds of the jury as to the Appellant's guilt had that evidence been given at the trial. Each case had to be considered on its own facts but in general the reception of fresh evidence before the Court of Appeal should be considered wholly exceptional. 24. The decision in *Khan* also considered the manner in which the Court should approach criticisms of the conduct of the Appellant's trial advocate, stating that: "It is important to have in mind considerations of the conduct of counsel, where such conduct is impugned, as evidence which might have been available at trial may have been overlooked by incompetent counsel with significant results for an appellant." 25. The Court found that "It is necessary for a court to identify an error on the part of trial counsel which has given rise to a miscarriage of justice sufficient to warrant quashing the conviction and allowing the appeal". Applying this to the application to adduce fresh evidence in that case the Court stated: "If as the Appellant's advocate argues, we accept that trial counsel has been guilty of an error potentially giving rise to a miscarriage of justice then it amounts, principally, to a failure to call evidence that was available at trial. The advocate's failure to call such witnesses, if that such failure was culpable, means that such witnesses were not available in the true sense of the word. Accordingly the first of the four limbs and the tests set out in *Hume v AG* would be satisfied upon such a finding. However, the court would be unlikely to find that counsel had committed a culpable error unless such evidence was also relevant and capable of belief, thus satisfying the second and third limbs of the test for admission of fresh evidence. Counsel's conduct is only capable of being sufficient to lead to the quashing of the conviction if the error is such as to have led to a miscarriage of justice which is similar, but not identical to, the fourth limb of the test for the admission of fresh evidence." 26. Advocate Heath was faced with a situation where she had been told that a witness might be available to give evidence for the defence but it was clear to her that this witness was unwilling to attend court. Given Mr Goguelin's reluctance to engage with her office, she was not even able to take a proof of evidence from him to ascertain what he was likely to say in court and whether it would assist or hinder the defence. This required a judgment call on her part. She clearly weighed up the risk of calling a witness whose evidence was unknown and concluded that calling Mr Goguelin in those circumstances was too great a risk. It appears from her affidavit that this was discussed with the Appellant who agreed not to compel Mr Goguelin to give evidence. Were there to be an application before this Court to call fresh evidence, the Court would first wish to know what that evidence was, in order to apply the test set out in *Hume v AG*. In a sense, this Court is in the same position as Advocate Heath. 27. The evidence was not unavailable, given that there was an identifiable witness who was present at the scene (and was indeed a participant in the incident), but not knowing what

the witness would say if called to give evidence, one cannot say what impact it would have made on the Magistrate had it been produced. 28. We accordingly find that Advocate Heath's decision not to compel Mr Goguelin to give evidence, a decision that was accepted by the Appellant at the time, did not amount to an error giving rise to a miscarriage of justice. Misgendering 29. The Appellant makes complaint of misgendering by the Relief Magistrate at the first hearing and previous misgendering by the Assistant Magistrate, who presided at the directions hearing. 30. It is fair to note that the Relief Magistrate initially addressed the Appellant as "Mr Bisson", but immediately corrected that to "Ms Bisson". There is no evidence that it was anything other than a slip of the tongue and, in any event, neither the Relief Magistrate nor the Assistant Magistrate was the decision-maker in respect of the conviction. 31. In relation to the complaint that the trial was "unfair and an injustice", the Magistrate, having allegedly allowed the Complainant to refer to the Appellant as a male, we note that at the beginning of his evidence the Complainant was asked by prosecution counsel whether he noticed some people sitting on a bench and replied "Two males sat on the - well, two individuals sat on the bench, calling me these names". Thereafter, he referred to the Appellant variously as "Erin" or "she". Nothing in the transcript suggests to us that there was a need for the Magistrate to intervene and we therefore reject the complaints concerning misgendering. Uncertainty as to details of the charge 32. When the Appellant was first presented before the Magistrate's Court, the charge suggested that the threatening or abusive words were used between 23 March 2022 and 19 April 2022. However, at that hearing the prosecution were permitted to amend the charge to refer only to 23 March 2022 and to identify the location as being the Weighbridge. 33. At the pre-trial directions hearing, Advocate Heath raised a matter concerning the witness statements, pointing out that the charge related to 23 of March 2022, but the witness statements referred to incidents on 24, 25, 26, and 27 March. The prosecution advised the Relief Magistrate that they would be submitting agreed facts and would only refer to the incident that had been discussed before the Assistant Magistrate. In the event, the agreed facts simply referred to the Complainant working as a taxi driver on 23 March 2022 and being parked at the Weighbridge taxi rank at approximately 2245, and to the fact that the Appellant was present at the Weighbridge that evening. 34. Despite the charge being confined to 23 March 2022 and thus before midnight, there was nevertheless some discussion on the day of trial as to precisely which events the prosecution was relying on. Advocate Heath submitted that the defence was "slightly disadvantaged" in that she suggested that it was only for the first time that morning that she had heard that the charge related to a specific incident. The Magistrate pointed out that the charge specified a date, but Advocate Heath indicated that she had relied on the Complainant's statement to the police which talked about an incident at 2245 and then other incidents at 2307, 2332, 2334, and then 0030 to 0040. She suggested that she was expecting to deal with anything that arose in relation to those times and that was why the video of what happened at 0040 was part of the events of that night. The Magistrate did however point out that 32 seconds of the video had been agreed by both parties and suggested that nothing on the video showed any actions by the Appellant amounting to

threatening or abusive behaviour. Advocate Heath was asked by the Magistrate whether she was ready to go ahead or whether she needed any more time, but she indicated that she was ready to proceed. Given that Advocate Heath could have asked for an adjournment or delay if she had felt seriously disadvantaged, we do not see that the discussions as to a possible uncertainty of the precise incident upon which the prosecution relied resulted in an unfair trial. Alleged failure by the police to investigate the Complainant 35. The suggestion that the Complainant was the aggressor was a point that was raised by the Appellant and her counsel, and the Magistrate was therefore aware of this. Furthermore, it was a point put to the Complainant in cross-examination. However, this related to incidents after that in respect of which the Appellant was charged. In our view, it was entirely a matter for the police and the prosecution to consider whether any further steps needed to be taken in respect of the Complainant's later behaviour. We accordingly reject this ground of appeal. Could the Magistrate properly have come to the decision that she did? 36. As we have already noted, the test that we must apply is whether there was evidence on which the Magistrate concerned could properly have come to the decision that she did. In our view, there was. The Magistrate heard evidence from the Complainant to the effect that the word "nonce" was used by the Appellant on more than one occasion, it was directed towards him, he heard it, it was "annoying and upsetting" and it caused him to be "angry and upset". It is, of course, not a necessary ingredient of the offence that the words actually caused offence, simply that they were likely to and, accordingly, the Complainant's misunderstanding of the meaning of the word "nonce" is immaterial. The Magistrate was entitled to find that the word "nonce" was abusive and likely to cause the person hearing it alarm or distress. 37. Set against the Complainant's evidence was that of the Appellant. She accepted that she sat on the bench mimicking a cuckoo but denied using the word "nonce", saying that "I did not use any word that even resembles the word 'nonce'. I am not responsible for any other person's behaviour". The latter comment would appear to have been a reference to Mr Goguelin, whose behaviour was also criticised by the Complainant. Faced with a conflict between the evidence of the two witnesses, the Magistrate was in a position to assess their credibility. She was able to give such weight as she thought fit to the further matters that defence counsel suggested she should take into account, namely that there was "bad blood" between the Complainant and the Appellant and that the Complainant may have been the aggressor. 38. In delivering her decision, the Magistrate found the Complainant to be an honest, accurate and reliable witness, who answered questions fully, explained what happened in some detail and did not shy away from the fact that he had confronted the Appellant and the other man. In contrast, she found the Appellant to be an evasive and argumentative witness who would not expand on what happened and was not willing to be fully cross-examined. She found that the word "nonce" was said multiple times and was an abusive word, whether in the Complainant's understanding at the time, as a prison informer, or the other meaning, a paedophile. She was satisfied that the Appellant used the word many times towards the Complainant, that he was within hearing of her and that the use of these words was likely to cause alarm and distress. She

correctly noted that the offence did not require the words actually to have caused alarm and distress, but the Complainant's evidence, which she accepted, was that the use of those words alone, before the evening progressed to other behaviour, left him angry and upset. 39. Having reviewed the transcripts, we are satisfied that there was evidence upon which the Magistrate could properly have come to the decision that she reached. Her comments as to the demeanour of the witnesses are supported by the transcript. We accordingly dismiss the appeal against conviction. Appeal against sentence 40. The Appellant's appeal against the sentence of a £300 fine (or 10 days in default) and a two year restraining order was on the basis that the fine was manifestly excessive and that the wording of the restraining order was such that compliance with it would be impossible. 41. The Magistrate was addressed by Advocate Heath on the Appellant's income and the fact that she could afford to pay no more than £10 per week towards any fine imposed. Given that the maximum fine for the offence of which the Appellant was convicted is £10,000 the fine of £300 is at the lowest end of the scale and we do not consider it to be manifestly excessive. The Appellant was ordered to pay £400 towards the prosecution costs, at a similar rate of £10 per week, on the basis that the payments in respect of the two orders would be made consecutively, not concurrently. 42. The restraining order, which had a duration of two years, was in the following terms: (i) The Defendant is prohibited from having any contact, including verbal contact, direct or indirect, with Mr Paul Tostevin. (ii) The Defendant is prohibited from following Mr Tostevin. (iii) Should the Defendant see or come into contact with Mr Tostevin in any public or private place, she must take immediate action to avoid any breach of this Order. 43. At the sentencing hearing, the Magistrate was referred by the prosecution to Article 5 of the Crime (Disorderly Conduct and Harassment) Law 2008 ("the 2008 Law"), which makes clear that the Magistrate had to be satisfied, on a balance of probabilities, that it was appropriate to make a restraining order in order to protect the victim from conduct which would amount to harassment of the victim. The terms of the order sought by the prosecution initially were that the Appellant would be prohibited from approaching within one hundred metres of the Complainant. The Magistrate regarded that as problematic, in that it would be difficult for the Appellant to know whether or not she was within one hundred metres of the Complainant. She correctly noted that any order made had to be "reasonable and proportionate" given that it would be an interference with the Appellant's rights under Article 8 of the Human Rights Convention. The Appellant's advocate had argued that there was no need for a restraining order given that the Complainant could have stayed away from the Appellant and Mr Goguelin, and that there was no evidence that he was "really frightened". When imposing the restraining order, the Magistrate stated that she was satisfied on the balance of probabilities that an order was required, noting that it must be reasonable, proportionate and capable of being complied with. 44. The Crown referred us to guidance in Archbold (Archbold Criminal Pleading Evidence and Practice 2023 Ed.) in relation to the imposition of restraining orders under English legislation (now the Sentencing Act 2020 s.360), which is in similar terms to the 2008 Law. The guidance, derived from a decision of the Court of Appeal for England and Wales in Debnath

[2005] EWCA Crim 3472 is in the following terms: (i) The purpose of a restraining order is to prohibit particular conduct with a view to protecting the victim of the offence and preventing further offences under [the Law]; (ii) a restraining order must be drafted in clear and precise terms so there is no doubt as to what the defendant is prohibited from doing; (iii) orders should be framed in practical terms (for example, it may be preferable to frame a restriction by reference to specific roads or a specific address); a radius restriction will not necessarily invalidate an order; if necessary a map should be prepared; (iv) in considering the terms and extent of a restraining order, the Court should have regard to considerations of proportionality; and (v) the power of the Court to vary or discharge the order by a further order... is an important safeguard. 45. By the Appellant's own admission there was a poor relationship between her and the Complainant: there had been litigation in the past between the Appellant and the Jersey Taxi Drivers' Association of which the Complainant was a committee member. Notwithstanding this, the Complainant chose to sit on a bench directly opposite, and within earshot of, the taxi rank at the Weighbridge and chose to antagonise the Complainant, albeit that on her evidence this comprised the making of "cuckoo" sounds. Given the Magistrate's finding as to the use of the word "nonce", it was entirely reasonable in our view for the Magistrate to impose a restriction aimed at preventing a similar situation arising in future for the Complainant. As a result of the Complainant's occupation as a taxi driver, it would be difficult to define a particular street or streets to be avoided by the Appellant and therefore it was appropriate to link the restraining order to contact between the Appellant and the Complainant. The third limb of the restraining order clearly recognises that there might be occasions when the Complainant inadvertently comes into contact with the Appellant, and it therefore makes clear that in such circumstances the Appellant must take steps to distance herself from the Complainant. 46. In our view, the restraining order was both reasonable and proportionate and was entirely appropriate in the circumstances of this case. Accordingly, the Appellant's appeal against the imposition of the restraining order is dismissed. *Authorities Graham v AG*

[2013] JRC 014 . *Magistrate's Court (Jersey) Law 1949. Criminal Procedure (Jersey) Law 2018. Rushton v AG (Royal Court October 16th 1989 Unreported). Mohammed Ronnie Khan v AG* [2020] JRC 128 . *Hume v AG*

[2006] JCA 162 . *Crime (Disorderly Conduct and Harassment) Law 2008. Archbold Criminal Pleading Evidence and Practice 2023 Ed. Debnath*

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