

JERSEY / JUDGMENT

Connor v AG [2018] JRC 206 (12 November 2018)

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JUDGMENT

THE COMMISSIONER: 1. This is an appeal by way of case stated under Article 21(1) of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 ("the 1949 Magistrate's Court Law") which is in these terms:- "21 Statement of case by Magistrate (1) Any person who was a party to any proceeding before the Magistrate's Court or is aggrieved by the conviction, order, determination or other proceeding of the Magistrate's Court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction, by applying to the Magistrate to state a case for the opinion of the Royal Court on the question of law or jurisdiction involved. Provided that a person shall not make an application under this Article in respect of a decision which by virtue of any enactment is final." 2. In terms of procedure on such an appeal, Article 22(1) provides:- "Procedure on consideration of appeal by case stated (1) On an appeal by case stated under Article 21, the Royal Court shall hear and determine the question or questions of law arising on the case and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Magistrate's Court, with its opinion thereon, or may make such other order in relation to the matter, and may make such orders as to costs, as may seem fit." 3. The appellant was sentenced by Relief Magistrate Le Cornu on 4 th September, 2018, to six months' imprisonment for a grave and criminal assault, a fine of £300 for possession of MDMA (a Class A drug) and a fine of £200 for possession of cannabis (a Class B drug). He was also ordered to pay compensation of £710 for damage to the victim's belongings and £500 for the victim's injury. 4. The appeal relates solely to the compensation ordered of £710 for the victim's belongings. The power of the Relief Magistrate to order compensation is under Article 2(1) and (2) of the Criminal Justice (Compensation Orders) (Jersey) Law 1994 ("the 1994 Compensation Law") which is in these terms:- "2 Compensation orders against convicted persons (1) Subject to the provisions of this Law, a court by or before which a person is convicted of an offence, instead of or in addition to dealing with the person in any other way, may, on application or otherwise, make an order to pay compensation for any personal injury, loss or damage resulting from that offence or to make payments for funeral expenses in respect of death resulting from any such offence, other than a death due to an accident arising out of the presence of a vehicle on a road. (2) Subject to paragraph (3), a compensation order shall be of such amount as the court considers appropriate, having regard to any evidence and any representations that are made by or on

behalf of the offender, any person who appears to the court to have suffered any personal injury, loss or damage resulting from the offence for which the offender has been convicted or the Attorney General or the Centenier who presented the offender before the court." 5. Just before the sentencing hearing, Advocate Pinel, who was representing the appellant, was handed a copy of a compensation form CJU19, partially completed in handwriting, assumed to be that of the victim, but unsigned and undated. Under section A "Property stolen (and not recovered) or damaged", the victim had inserted:- "iPhone 6s 1289 Smashed glass & screen £650 Designer T. Shirt (covered in blood) £60 Under the heading, the form provides the following:- "It is important that you provide documentary evidence to support your claim. This means that copies of receipts, estimates or bills should be provided wherever possible." 6. It is accepted by Crown Advocate Baglin that this form was handed to Advocate Pinel immediately before the hearing, and she informed me that she did not have time to take instructions on it. She said this to the Magistrate:- "In relation to the compensation order, Sir, Mr Connor is currently in prison and is not earning and does not have any money by way of savings in order to pay a compensation order". 7. After a brief adjournment, the Relief Magistrate then sentenced the appellant, simply saying:- "I am making a compensation order, first of all, for the damage to his property in the sum of £710 or two weeks, and, for the injuries that he suffered, compensation in the sum of £500 or two weeks." 8. The grounds of appeal are that the Relief Magistrate failed to take into account information which should have been considered. In particular:- (i) The compensation order was not agreed by the defence. (ii) The Magistrate made no enquiry into the contents of it; specifically the costs listed for the belongings. (iii) It must have been clear that the amount of £650 specified in the compensation claim form for the repair of an iPhone 6s was excessive, exceeding the cost of repairing such a phone let alone the cost for replacing such a phone. (iv) It must have been clear that cleaning a T shirt would cost well below the £60 claimed. (v) There were no supporting documents submitted by the Prosecution for consideration by the Magistrate to justify the amounts claimed. Furthermore, it was asserted that the Relief Magistrate acted in excess of his jurisdiction by making the order for compensation without due consideration of clear facts and without any supporting documentary evidence, thus exceeding his jurisdiction by ordering the compensation of £710 to be paid for the belongings. 9. The Attorney General's response was as follows:- "15 While the CJU19 form sets out that appellant must attach documentary proof; the 1994 Compensation Law does not require that any order is made only upon receipt of and/or consideration of documentary evidence of any kind. The Relief Magistrate received and considered the evidence of the victim's injuries, the compensation form CJU19, the facts of the offence, the fact that the appellant would find an abundance of work upon his release from prison and the UK Sentencing Council Guidance on Compensation and after due consideration of the submissions of counsel made the compensation order. The CJU19 Form sets out the damage to the mobile phone as a smashed screen and glass and a blood covered tee-shirt. The figures strongly indicate that both items were beyond repair or washing and had to be replaced. The victim was approached by police in September 2018 and unsurprisingly he had not retained the receipts for his phone or his tee-shirt damaged the previous year. The appellant's counsel did not challenge the amount of the sums set out in the compensation form at the sentencing hearing or make any submissions on any lack of documentary evidence. Nothing that the Magistrate did in

awarding the compensation order in the sum of £710 was beyond his jurisdiction. The appellant's counsel made no application on receipt of the compensation form CJU19 to adjourn the sentencing hearing for the provision of any further documentation or otherwise." It was therefore Crown Advocate Baglin's submission that the compensation order was properly made and that the appeal should be dismissed. Decision 10. Advocate Pinel accepted that she did not challenge the compensation being claimed and, on reflection, should have done so. The Relief Magistrate must therefore have assumed that there was no challenge to it, and proceeded accordingly. I am aware of the high turnover of cases in the Magistrate's Court and do not criticise the Relief Magistrate for not giving the claim the kind of scrutiny that a challenge from the defence counsel would have prompted. 11. However, I am left with a sense of unease as to the outcome. I accept that under Article 2(2) of the 1994 Compensation Law the Relief Magistrate was required to have regard to "any evidence" before him, so that there is no requirement for any specific kind of evidence to be produced, but where the claim relates to damaged property, there must presumably be some evidence of the damage and the amount needed to compensate for it. 12. The only evidence the Relief Magistrate had was the unsigned and undated form CJU19, with no documentary evidence attached to it. On that form, the victim had stated that the glass and screen of the iPhone had been smashed, but the amount claimed, namely £650, goes, I am told, way beyond the cost of the complete replacement of such an iPhone, let alone the cost of its repair. A quick glance at the internet suggests that a new iPhone 6s can be purchased for £250 if not less. In addition, £60 seems very high for a new T shirt. 13. It seems possible, therefore, that the amount ordered by the Relief Magistrate goes beyond compensation and would give the victim a profit; as Advocate Pinel says that is not the purpose of the 1994 Compensation Law. She argued that the Relief Magistrate simply did not have sufficient evidence on which to properly exercise his powers, and in that sense, was acting in excess of his jurisdiction. 14. I did question why this appeal had been brought on a narrow issue of law, when there is provision for an appeal against a compensation order contained in Articles 6(3) and (4) of the 1994 Compensation Law, which is in these terms:- "6 Appeals (3) Without prejudice to Article 17 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, a person against whom a compensation order is made or a person who has been ordered under Article 3(4) to pay compensation by the Magistrate's Court or the Youth Court may appeal to the Royal Court against the order, including a default sentence, whether or not the person also appeals against the conviction or the sentence imposed for the offence in respect of which the order was made. (4) Article 18, 19 and 20 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 shall apply mutatis mutandis to an appeal under paragraph (3) as they apply to an appeal under Article 17 of that Law." 15. If it was in the interests of justice for me to do so, it would have been open to me, I believe, to deem this appeal to have been brought under the wider provisions of Article 6(3), extending time pursuant to Article 18(3) of the 1949 Magistrate's Court Law, but I was reminded of the extensive powers given to the Royal Court under Article 22(1) of the 1949 Magistrate's Court Law, in particular the power to remit the matter back to the Magistrate's Court with its opinion, or to make such other order in relation to the matter, as it may seem fit. 16. The sums involved are material to the appellant and I am concerned that there may have been an injustice here, with the appellant being ordered to pay a sum which may go well beyond compensation. 17. I am

therefore going to allow the appeal, set aside the compensation order of £710 and remit the matter back to the Magistrate's Court, so that the amount of compensation to be paid to the victim for his belongings, assuming he maintains his claim, can be re-assessed. 18. I would recommend that a new CJU19 form be completed, dated and signed, and that the victim produce documentary evidence to justify the sums he is claiming. If he no longer has receipts for the damaged items, which would be perfectly understandable, he should produce some evidence of the cost of repair or replacement. Authorities Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. Criminal Justice (Compensation Orders) (Jersey) Law 1994. Page Last Updated: 13 Nov 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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