

JERSEY / JUDGMENT

F v Attorney General

COURT

Royal Court

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Common assault - appeal against two aspects of an order made during his sentencing by the Magistrate on 22nd February, 2018.

[2019]JRC012

Royal Court

(Samedi)

5 February 2019

Before :

T. J. Le Cocq, Esq., Deputy Bailiff, and
Jurats Crill and Pitman.

F

-v-

Attorney General

Advocate D. S. Steenson for the Appellant.

J. C. Gollop, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal by F (“the Appellant”) against two aspects of an order made during his sentencing by Magistrate Harris on 22nd February, 2018, for common assault on the Complainant. The parts of the order in respect of which the Appellant wishes to appeal are, firstly, the imposition by the Magistrate of a restraining order of 5 years duration and, secondly, the refusal by the Magistrate to award costs to the Appellant in respect of a charge of grave and criminal assault which was dismissed when the prosecution offered no evidence. The Appellant had pleaded guilty instead to the charge of common assault.

Background

2. The Appellant was arrested following an allegation of domestic assault against the Complainant. He was detained in custody and brought before the Magistrate’s Court on 25th September, 2017. 3. There were certain elements which formed part of the alleged assault which included man-handling the Complainant, such that her arms were bruised; possibly handling sharp knives intentionally to cause her distress and fear and assaulting her by

pushing her against the wall and putting his, the Appellant's, hands around her neck and strangling her. 4. It was clear from the outset that the Appellant accepted that there had been an altercation between himself and the Complainant but, specifically, he denied handling knives in the way suggested or putting his hands around her neck. 5. The Appellant, presumably in the light of the allegation relating to knives but, more significantly, in connection with the allegation relating to strangulation was presented before the Magistrate's Court on a charge of grave and criminal assault. He entered a plea of not guilty and defence counsel confirms that when doing so he expressly stated that the plea was not guilty on the basis that the grave and criminal assault allegation was that the defendant put his hands around the Complainant's neck and the strangulation which was denied. 6. There were a number of hearings of a procedural nature and at one shortly before the time set aside for trial, on an application for the use of screens, defence counsel made a suggestion which communicated a basis of plea to a charge of common assault which was accepted. Shortly thereafter the Appellant pleaded guilty to common assault on the basis that he had bruised the Complainant's arms. 7. It can be readily appreciated that that was a very different allegation than the use of knives and/or strangulation, or hands around the throat. It is in that context that the Appellant advanced his arguments as to costs before the Magistrate. The serious charge of grave and criminal assault had effectively not been proceeded with and the less serious charge of common assault was accepted by the Crown at a late stage. The Appellant argues that it should have been clear that a plea to a lesser charge might well have been available at a much earlier stage. Costs 8. The Appellant's argument on costs was deployed fully within his skeleton argument including the citation of relevant authority. The Respondent's argument was equally fully deployed. 9. We do not think, however, that it is necessary for us to deal with that aspect, as the Respondent took a preliminary point with regard to the appeal on costs which, in our judgement, is dispositive of that element of the appeal.

10. This appeal is brought before us purportedly under Article 18 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 ("the 1949 Law") which deals with notices of appeal. The right of appeal is, however, set out in Article 17 of the 1949 Law which states:-

- (1) A person convicted by the Magistrate's Court may appeal to the Royal Court -
 - (a) if the person pleaded guilty or admitted the facts, against the sentence; ...
 - (3) In this Article, "sentence" includes any order made on conviction by the Magistrate's Court, not being -
 - (a) ...
 - (b) ...
 - (c) an order for the payment of costs;
 - (d) ... (e)..."

11. Prima facie, therefore, no appeal lies under Article 17 of the 1949 Law in connection with costs.
12. It is argued by the Respondent that if the Appellant had wished to challenge the decision on costs then the correct procedural path would have been to apply to the Magistrate to state a case pursuant to Articles 21 and 22 of the 1949 Law. Further support for this point may be found in *Romeril –v- Attorney General* [2001/71] and *Manning –v- Attorney General* [2009] JRC 012.
13. When confronted with this preliminary point, defence counsel, with customary reasonableness, accepted that it appeared to be a strong one but invited the Court to treat the judgment of the Magistrate delivered in this case as in effect a case stated.
14. We do not think that we are able to do so. It is not in our view possible to move between distinct procedures provided for within the 1949 Law, nor would in our view it be just to do so. In seeking a case stated from the Magistrate the Magistrate is afforded the opportunity of setting out in full why he formed the view that he did, specifically with regard to the question of costs.
15. That is, in our judgement, the most appropriate way of proceeding. Restraining order
16. As the matter was argued before us, the appeal against the imposition of a restraining order was both as to the factual basis upon which it was imposed and its length – namely five years.
17. We had the benefit of the transcript of the hearing before the Magistrate of 22nd February, 2018, when he dealt with the matter of the restraining order.
18. At paragraph 17 the Magistrate said this:- “... The other matter I have to deal with today is the question of a restraining order. I have read the Complainant’s statement in support of that and I think that an order would be appropriate. You have been subject to bail proceedings – sorry, bail conditions – which are on similar lines, for a number of months now and, of course, you have been compliant with those conditions. I am going to make an order broadly in the terms of the draft ...”
19. There then followed an exchange between the Magistrate and the defence counsel in which defence counsel sought clarification from the Magistrate that he is proceeding on the basis of the statement of the complainant made to the police and not those that she made that were contained within the Social Enquiry Report which painted a different picture. Defence counsel made clear that the first statement, which alleged a history of violence at the hands of the Appellant, was not accepted by him whereas what the Social Enquiry Report set out, namely that the instant case was the first occasion of physical aggression, was accepted.

20. The Magistrate, at page 19 of the transcript says:- "...I have not suggested or considered any allegation of previous violence because there is none before the Court for sentencing purposes. But, for the purposes of imposing a restraining order, I am looking at the statement in its general terms and, quite clearly, the Complainant is expressing concerns about the future, her fears and the like and I think that imposing a restraining order is proportionate in the circumstances."
21. At page 20 of the transcript, the Magistrate, in considering duration, says this:- "Now, in terms of the length of the order, the prosecution asks that I impose that for a period of five years. That might be regarded as not as standard but a not uncommon period of time for which such orders are sought. When considering what is the appropriate length of the order, I have in mind in particular that the children, the youngest is still quite young and I think a period of five years is an appropriate length of time, obviously with the exception that I have put in place for contact via legal representatives. It may be that within that five year period, arrangements can be made for contact with the children, but that, obviously, is a matter for the Royal Court to determine or for the parties themselves to determine."
22. The restraining order, imposed for a period of five years, was in the following terms:-
 1. The Defendant is prohibited from having any contact, direct or indirect, with the Complainant excepting indirect contact via legal representatives regarding any future court hearing.
 2. The Defendant is prohibited from approaching or following the Complainant.
 3. The Defendant is prohibited from entering any part of the premises known to him to be the home address of the Complainant or loitering within 50 metres thereof.
 4. The Defendant is prohibited from entering any part of the premises known to him to be the work address of the Complainant or loitering within 50 metres thereof, her current work address [.....].
 5. Should the Defendant see or come into contact with the Complainant in any public or private place he must take immediate action to avoid any breach of this Order."
23. The Complainant's statement to the police, made pursuant to Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 said, at paragraph 4:- "I have suffered abuse and violence for over 25 years, with fear for my life that always took advantage of me, but as the abuse was only towards me I suffered in silence. On that particular night my children's lives were also threatened and my son [Child 1], has witnessed F's violence towards me, so I managed to be strong for once. I put a stop to the abuse and left my home, my marriage and that violent man, but now I am facing difficulties that I never imagined that I would go through, I am alone in this process."

24. However, at paragraph 11 of the social inquiry report prepared for the sentencing before the Magistrate, the following appears:- “Having spoken to the Complainant, she does not wish to reconcile and is going ahead with divorce proceedings. Her version of events of the incident were similar to that of F, but she added that he had told her to leave the family home during the argument. The Complainant confirmed that whilst verbal arguments were a feature in their marriage, this had been the first time he had been physically aggressive towards her.”
25. The Appellant relies on the apparent conflict between the Complainant’s statement and the contents of the Social Enquiry Report and makes the point that, no evidence having been heard, the Magistrate should have proceeded on the defence’s version of events.
26. The prosecution for its part refers to paragraphs 27 to 29 of the Social Enquiry Report which reads:- “27. Taking all factors into consideration, whilst F is currently assessed as being at low risk of general reconviction within a 12 month timeframe, the risk is elevated due to violence featuring within his intimate relationship with the Complainant. The positive factors from the assessment include; his limited criminal history, good work ethic, no substance misuse issues and a supportive family network.
28. In terms of issues specifically relating to domestic abuse, I have completed the SARA (Spousal Assault Risk Assessment). The main areas of concern are; minimisation, denial, victim blaming and an escalation of verbal arguments becoming physical. This would place F at an elevated risk of further abusive behaviours within intimate relationships. Whilst the marriage has now ended, it is well documented that risk can also be elevated further following separation.
29. In relation to risk of harm, whilst there is no evidence of general violent offending behaviour and that he poses a risk of harm to members of the public, the defendant’s offending behaviour is demonstrating an elevated risk within intimate relationships...”
27. The Crown pointed to the fact that the Magistrate clearly did not sentence on the basis of pre-existing violence but on the basis of future risk and that he was entirely justified in both imposing the restraining order and considering that the period of five years was justified in all of the circumstances.
28. The length of the restraining order is a matter of the exercise of a discretion by the presiding judge. There is no doubt that the Magistrate had before him both the statement of the Complainant referred to above and the Social Enquiry Report. Counsel for the defence drew clearly to the Magistrate’s attention the conflict between the position set out in each of those documents.
29. It is evident that the Magistrate considered the matter and was clear that he was not taking into any account allegations of previous violence. He was, in the light of the admitted violence, looking to the future.

30. Defence counsel explained to us that the Appellant had no intention of ever seeing the Complainant again and the appeal was brought as a matter of principle.
31. In our judgement, particularly in light of the contents of the Social Enquiry Report insofar as it relates to risk, there was sufficient material for the Magistrate to impose a restraining order and it was not unreasonable for him to impose it for a period of five years. That is not to say that this Court, had it been exercising an original jurisdiction in considering the appropriate duration, would necessarily have done the same thing.
32. We are not, however, left with any lurking doubt as to whether or not justice was done in this case, nor do we think that the imposition of the restraining order and its duration was wrong in principle or manifestly excessive. We do not lightly interfere with the exercise by the Magistrate of a discretion and accordingly decline to do so in the circumstances.
33. Accordingly, the appeals against costs and against the restraining order are dismissed. Authorities Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. Romeril -v- AG [2001/71]. Manning -v- AG [2009] JRC 012 Criminal Justice (Evidence and Procedure) (Jersey) Law 1998
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