

JERSEY / JUDGMENT

Petriella -v- AG [2013]

JRC 057 (14 March 2013)

[2013] JRC 057

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JUDGMENT

THE BAILIFF: 1. This is an appeal by the appellant against his conviction before the Magistrate's Court (Advocate P Harris, Relief Magistrate) on 7 th September, 2012, of one offence of assault on a police officer whilst in the due execution of his duty. 2. At the conclusion of the hearing, the Court dismissed the appeal. We now give our reasons. The evidence before the Magistrate's Court 3. In very broad outline, the prosecution case was that, following his arrest for urinating in Don Street in the early hours of Friday 1 st June, the appellant head-butted PC Manners near the back of the police van which was to take the appellant back to the Police Station. 4. The Magistrate saw CCTV evidence of the scene in Don Street and this showed the events leading up to the alleged incident, but the rear of the police van was not visible on CCTV and accordingly it provided no direct evidence about the alleged assault. The prosecution essentially relied upon the CCTV evidence and the evidence of three police officers, PC Manners, PC Sturgeon and PC Jagodka. The defence relied upon evidence from the defendant and a friend who had been present at the time of the arrest. 5. PC Manners gave evidence that he was on patrol and was asked by the Control Room to attend in Don Street. There he saw the appellant urinating against a wall. He arrested him for urinating in public and asked the Control Room for transport. He said that the appellant was under the influence of alcohol. He could not stand straight and the officer estimated him to be at 7 on a scale of 1-10 with 1 being sober and 10 being very drunk. Sergeant Breese arrived separately very shortly thereafter and he remained with PC Manners and the appellant. After a while PC Sturgeon arrived. The appellant was handcuffed with his hands behind him. 6. In due course the police van, driven by PC Jagodka arrived and PC Sturgeon and PC Manners walked the appellant across to the rear of the police van. Sergeant Breese appears to have departed at about this time and was not present at the time of the alleged assault. According to PC Manners he searched the appellant in the back of the van and noticed a pin badge that the appellant was wearing on his clothing. He decided to remove this. He had to move close to the appellant to do this and as he was doing so and concentrating on the pin badge, the appellant moved his head backwards and then moved it swiftly forwards connecting with the side of the officer's head, although the officer could not recall which side. It was, he said, an intentional head-butt. The officer said that it caused him to reel backwards. He then immediately moved forward and struck the appellant to the face with a closed fist in order to protect himself and other officers from

further assault. This had the effect of pushing the appellant into the back of the van with his feet still out of the van. The officer then lifted the appellant's feet up and put them in the cage before closing the door. He said that the head-butt caused a throbbing pain in his head and he had a red mark but he did not see a doctor and continued working to the end of the shift. By then the reddening had reduced and the pain had subsided. He felt fit enough to return home and sleep. 7. He was asked by the Magistrate about the removal of the pin badge and the transcript records the questions as follows:- "Magistrate: Do you recall what the pin badge was? Witness: No, I believe it was a name badge. Magistrate: And did you actually remove it from him? Witness: I believe after the ... Magistrate: That was your intention? Witness: after the assault. The intention was to remove it. After the assault we just put him in the back and just got him back to the station and dealt with it then." 8. The officer said that the appellant had remained verbally abusive whilst being detained before the police van arrived saying that he would assault the officer should he (the appellant) lose his job. 9. PC Emma Sturgeon gave evidence that she was on a single-crewed mobile patrol in a police car. She was called to assist PC Manners, who was also in a single-crewed unit. When she arrived she could see PC Manners and Sergeant Breese and they were detaining the appellant and attempting to place handcuffs on him. She went over and assisted them which allowed PC Manners to apply the handcuffs. She said that during this time the appellant was shouting and swearing at the officers and was threatening to harm the officers if he had lost his job because of being arrested. She could smell alcohol and his speech was quite slurred. Once the handcuffs were on, she and PC Manners held the appellant steady on his feet. During that time he continued to shout and swear but he had calmed down by the time the police van arrived. 10. They then walked him to the back of the police van, which was driven by PC Jagodka. It was standard practice to search a prisoner being placed in a van. PC Manners carried out the search. At that time the appellant was sitting on the back of the van. She said that PC Manners tried to remove a small badge that was on the appellant's jacket and as he did so, the appellant swung his head back and forward and connected with PC Manners around the forehead area. The appellant at the time was propped up against the back of the van to steady him to allow him to be searched. As a result of the blow, PC Manners went backwards but then pushed the appellant with his right arm and this resulted in the appellant being pushed back into the van. They then took the appellant's legs, placed them in the van and shut the door to avoid any further incident. 11. In cross-examination she said that she thought the head-butt had struck around the front of PC Manners' head. She was asked whether PC Manners had pushed the appellant or punched him after the head-butt. She said she could not tell whether it was a punch or an open arm but it connected with the appellant's face. She was invited to look at the CCTV and she clarified that Sergeant Breese had got into his patrol car prior to the incident, so he was not present at the critical time. 12. PC Jagodka gave evidence that he was requested to drive the police van to Don Street to provide transport for the appellant and PC Manners. When he arrived the only police officers that he saw were PC Manners and PC Sturgeon. He opened the cage at the back of the police van and the two police officers escorted the appellant, who was handcuffed, to the rear of the van. The appellant sat on the floor of the cage with his legs still on the street surface. PC Jagodka recalled that the appellant had a name badge on his chest with possibly a sharp pin and PC Manners tried to reach the badge in order to remove it. At that stage the

appellant head-butted PC Manners. The officer said it landed in the area of PC Manners forehead but he could not tell exactly where. PC Manners then pushed the appellant into the cage and the door was closed. He said that the appellant appeared to be verbally aggressive as he was being escorted towards the van because he was swearing but he could not recall what was said. He said that when they arrived at the Police Station the appellant was verbally aggressive towards the police when he was presented before the custody sergeant. In cross-examination he said that he did not see PC Manners strike the appellant immediately after the head-butt, he saw the officer push the appellant. He was referred to PC Manners' witness statement where PC Manners had said that he had punched the appellant immediately after the head-butt, but PC Jagodka said that he did not see a punch; as far as he was concerned it was a push. 13. Before the appellant gave evidence, there was a discussion about the CCTV. The appellant alleged that the police had intentionally cut short the CCTV. The legal adviser appearing for the prosecution, Advocate Baglin, said that the initial CCTV supplied to the defence ended as the police were walking the appellant to the van. Subsequently the longer version of the CCTV was disclosed which was not cut off at that point and he informed the Magistrate that that was the one he (the Magistrate) had been shown that morning. It then transpired (page 50 of the transcript) that the appellant was in possession of three CCTV discs. The legal adviser interjected to say that one of them simply showed the custody procedure and this did not add anything to the assault. The other two were the two versions just referred to, with one only showing part of the whole incident. 14. The appellant gave evidence that, following his arrest by PC Manners, he was completely compliant and that the officers pushed him and pulled him all over the place as if he were a dog. When he was taken behind the van, they just "chucked" him into the van and shut the door. He said that before they pushed him into the van, he was pulled in a vigorous manner and that his head may have touched PC Manners' head at that stage but it was not intentional head-butting. He had no intention to head-butt or head-bang the police officer. He said that they were laughing at him saying that they would let him (the appellant) lose another job. 15. In cross-examination he accepted that, on a scale of 1-10 in terms of being drunk, he was about 5½ or 6. He reiterated that there was contact but that this was not intentional head-butting; it was caused because PC Manners pulled him and there was accidental contact. 16. The appellant then called Mr Prouet, who needed an interpreter. Mr Prouet said that he had been out that evening with the appellant and one other. They had been drinking but Mr Prouet was aware of what was going on. He remembered that the appellant had been arrested and that the appellant had been calm but he did not know what was said to the appellant when he was arrested. He said the appellant was aggressive towards the police to begin with but then he was quiet. He said that he had not heard anything from the back of the van after the appellant had been taken over there by the police officers nor did he see the appellant give a head-bang. But he could not see anything at the back of the van because he was in front of the van. In cross-examination he reiterated that he could not see the back of the van and had not heard anything. 17. The transcript of the proceedings then shows a prolonged discussion where the defendant asks the Magistrate to look at what he says are different versions of the CCTV. It is rather difficult to follow but it would seem that there were in fact four discs of the CCTV in Don Street. During the course of the discussion, Advocate Baglin repeated that he did not think there was any need to see the custody suite CCTV unless the

appellant wanted to show it. The Magistrate made it clear that he only wanted to see the scene in Don Street. The Magistrate watched the four different discs of the Don Street scene before the luncheon adjournment but there continued to be confusion and he asked the parties to resolve the position over the adjournment. 18. During further discussion after the luncheon adjournment the legal advisor again repeated that the third disc was of the custody suite and was not relevant to the trial. The appellant appeared to say that he did not have that and the Magistrate repeated that what he was concerned with was what had happened in Don Street. The Magistrate then appears to have watched CCTV of the scene in Don Street a further three times after the luncheon adjournment. He seems to have agreed with the appellant that there were some differences between them concerning the "zooming" and whether one of the cameras appeared to be moved. But he was satisfied that none of them showed what happened behind the van doors and he did not think there was any material difference between the various copies of the CCTV footage. The appellant thought there was another version which he had seen earlier and he was clearly very suspicious as to whether he was getting proper disclosure. 19. At the conclusion of the hearing, the Magistrate gave a short judgment. He said that he had some sympathy with the appellant's concern about the quality of the management of the CCTV evidence and about PC Manners punching him. However, he concluded that the evidence of the three police officers was overwhelming and accordingly he found the appellant guilty of the assault. Test on appeal 20. The test on appeal from the Magistrate's Court to this Court is well established. The Court must consider whether there was evidence upon which the Magistrate could properly have come to the decision he did. If there was that evidence, then even though the Court might not necessarily have 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 conclusions and inferences from the evidence before him - see for example *Milho-v-AG*

[2000] JLR 363 and *Vibert-v-AG*

[2012] JRC181. Contentions on appeal 21. The main ground of appeal relied upon by Advocate Gollop is that the CCTV footage of the arrival of the appellant at the Police Station and his subsequent attendance in the custody suite (together "the custody suite footage") was not shown to the Magistrate because the legal adviser appearing for the prosecution had represented several times to the Magistrate that it was not relevant. Advocate Gollop asserted that it was in fact relevant for the following reasons:- (i) The footage showed that the name badge had been removed by the police in Don Street and this was contrary to the evidence of all three police officers at trial. (ii) The footage showed the appellant exiting the van at the Police Station unaided and walking upright to the custody suite and this was contrary to the evidence of PC Manners. (iii) The footage showed that the appellant did not push any officers at Police Headquarters and had made "no attempt to resist and get away" and this was contrary to what was said by PC Jagodka. Advocate Gollop submitted that, if the Magistrate had seen the custody suite footage, it would have undermined the credibility of the police officers, which was key to the prosecution's case. 22. In order to assess the validity of the appellant's contentions in this respect, the Court watched the

custody suite footage. Having done so, we take each of the three points relied upon by the appellant in turn. 23. We accept that the footage shows PC Jagodka, the driver of the van, handing the name badge to another police officer before the rear of the van is opened to allow the appellant to get out of the van at the Police Station. It follows that the badge must have been removed from the appellant at Don Street before the van moved off. The question is whether this is contrary to the evidence of all the police officers as the appellant's skeleton argument submits. 24. In our judgment, it is not. We have set out at paragraph 7 above a transcript of the evidence of PC Manners. In our judgment, his evidence is ambiguous, particularly as he and the Magistrate were talking across each other. He does not clearly state that the badge was not removed in Don Street and was only removed at the Police Station. There was no further questioning to clarify his evidence. 25. The other two officers were similarly imprecise. PC Sturgeon's evidence was that:- "PC Manners tried to remove a small badge that was on his ... jacket ... and as he did so, Mr Petriella's head had swung back, swung forward and connected with PC Manners. ..." He was never asked any further questions as to whether the badge was in fact removed at any time prior to the departure from Don Street. 26. Similarly, PC Jagodka's evidence was:- "... I remember Mr Petriella had a name badge on, on his chest, with possibly a sharp pin and I remember PC Manners trying to reach that badge in order to remove it and that was when Mr Petriella head-butted PC Manners." "As PC Manners leaned to reach, he was, I was stood quite close to Mr Petriella and he leaned to get that badge. ..." Again, PC Jagodka was never asked any further questions about whether the name badge was actually removed at the scene. 27. We are satisfied that this was an aspect which was simply not pursued in evidence. It is incorrect to say, as the appellant's skeleton argument did, that the fact that the name badge must have been taken from the appellant in Don Street was "contrary to the evidence of all the police officers". In our judgment, apart from the somewhat ambiguous reference in PC Manners' evidence, the issue was simply not addressed before the Magistrate. There was no evidence one way or the other. The CCTV evidence of what occurred at the Police Station does not therefore undermine the credibility of the police officers in this respect. 28. As to the second aspect, neither PC Manners nor PC Sturgeon gave any evidence as to the appellant's condition at the Police Station, only as to his condition in Don Street. The only evidence from PC Jagodka was to the effect that, when the appellant was presented before the custody sergeant in the custody suite, the appellant was being verbally aggressive towards all the police officers and was making threats. Having seen the CCTV, there is no sound and we cannot therefore hear what is said, but it is quite clear that the appellant had much to say and did not appear to be very happy with the situation. It certainly does not show that the appellant was not verbally aggressive. We accept that the footage shows that he was able to walk unaided and did not stagger. However we do not consider that seeing this evidence could possibly have made any difference to the Magistrate's decision. He had had the advantage of seeing the CCTV in relation to Don Street and could assess for himself the relationship between what he saw on the CCTV as to the appellant's condition and the evidence given to him by the police officers on that topic. 29. As to the third point relied upon, no evidence was given before

the Magistrate that the appellant had pushed officers at police headquarters or that he had made an attempt to resist and get away as contended in the skeleton argument. The only reference to these two matters that we have been referred to is to be found in the witness statement of PC Jagodka. That statement was produced to the Magistrate at the very end of the proceedings (see page 101 of the transcript) but this was solely in the context of whether, as the appellant was contending at the time, PC Jagodka had said in his statement that PC Manners had head-butted the appellant immediately after the appellant had head-butted him. It transpired on looking at the statement that this was not what PC Jagodka had said; he confined himself in the statement to saying that PC Manners had pushed the appellant immediately after the head-butt, which was consistent with what he was saying in his evidence before the Magistrate. 30. That is sufficient to dispose of this point. As PC Jagodka had never in fact given evidence that the appellant had pushed officers at Police Headquarters or that the appellant had made an attempt to resist and get away, CCTV footage showing that such evidence (if given) would have been incorrect could not have affected the outcome of the trial. 31. However, in fairness to the fact that the appellant was unrepresented before the Magistrate's Court, we have reviewed the statement on the ground that, if there were something in PC Jagodka's statement which the custody suite footage clearly showed to be untrue, it might have been used in cross-examination of the officer by an advocate on behalf of the appellant. In fact the statement does not say that the appellant pushed officers at Police Headquarters as contended in the skeleton argument. What PC Jagodka actually said in his statement was:- "At one point Petriella moved as if he was going to head-butt one of the custody officers PC Green. I stopped him, however he was still pushing towards PC Green." 32. Having viewed the custody suite footage, we do not think there is anything in that statement which is clearly wrong. It is a matter of opinion as to whether the appellant looked as if he was going to head-butt PC Green but he certainly did push towards her and was held by PC Jagodka as he did so. As to the suggestion in the appellant's skeleton that the custody suite footage showed that the appellant had made no "attempt to resist and get away", this is a reference to paragraph 8 of PC Jagodka's statement which relates to a point when the officer and another officer were escorting the appellant to the cells after leaving the custody suite. It follows that the CCTV footage of his arrival and detention in the custody suite does not assist on that aspect. Accordingly the fact that the Magistrate did not see such footage cannot have affected his decision. 33. In summary, we are satisfied, having viewed it, that the custody suite footage could not in any circumstances have affected the Magistrate's decision and accordingly the fact that it was not viewed by him is not a material irregularity and does not amount to a ground for quashing the conviction. 34. We would however emphasise the following point, without in any way indicating that the legal adviser in this case did not fulfil his duty, because we do not know whether he had viewed the custody suite footage. However, it is incumbent upon the prosecution to make full and fair disclosure. If a prosecution advocate is to assert to the Magistrate that CCTV footage of events at the Police Station is not relevant, he must by definition have looked at it himself in order to assess whether it is relevant, in the sense that it might possibly be helpful to the

defendant. The over-riding duty of the prosecution is to act fairly. 35. As a second limb of his argument, Advocate Gollop argued that there were a number of inconsistencies in the prosecution evidence and that the Magistrate had failed to have sufficient regard to these. Thus, he submitted that whereas PC Manners had accepted that he had punched the appellant immediately after the head-butt, the two other police officers had said merely that PC Manners had pushed the appellant. Advocate Gollop also pointed out that there was no medical evidence of any injuries suffered by PC Manners. He further submitted that there were inconsistencies between the officers as to where the head-butt had landed. PC Manners said that it was on one side of his forehead or the other but not in the middle, whereas PC Sturgeon described it as being to the "front of his head, sort of around the forehead area" and PC Jagodka said it was in the area of the forehead but he could not tell exactly where. Advocate Gollop also submitted that the officers had been inconsistent as to the degree of intoxication of the appellant and that what they had said in this respect was inconsistent with the CCTV footage of the scene in Don Street. 36. All of these matters were before the Magistrate. He had the opportunity of seeing and hearing the witnesses. It is often the case that there are minor inconsistencies in the evidence and it is for the judge of fact to assess whether these cast doubt on what is being said. In our judgment, none of the points made by Advocate Gollop, whether taken individually or cumulatively, gives any reason for concluding that there was not ample evidence upon which the Magistrate could properly find the appellant guilty. 37. Finally we should add that, after Advocate Gollop had addressed the Court, the appellant said that he disagreed with his advocate and wanted to make additional points. In the unusual circumstances of the case, we allowed him to do so. The main point that he wished to make was that the transcript of the proceedings before the Magistrate was wrong. In particular he denied that the legal adviser had ever said to the Magistrate that there was CCTV evidence of the custody suite but that such evidence was not relevant. He said that the legal adviser had in fact denied the existence of any CCTV footage of the custody suite. He further argued that, if he had head-butted the appellant as alleged, the custody sergeant and the officer in the custody suite would have looked frightened whereas the footage showed that they did not. In reply to the submissions of Crown Advocate Hollywood, and following Advocate Gollop, he said that in fact he had only received disclosure of the CCTV evidence after he had been convicted by the Magistrate and not before. 38. We are satisfied that these contentions are unarguable. The evidence before the Magistrate's Court is recorded and is then typed up by court staff. It does not involve the prosecution. Whilst it is of course always possible for minor errors to occur in transcription (e.g. mishearing of particular words), the idea that errors could exist to the extent which are implicit in the appellant's contentions is inconceivable. There are repeated references in the transcript to the legal adviser confirming that there is CCTV evidence of the custody suite but that it is not relevant. It is impossible to see how the transcribers on each occasion could mistake this for an assertion by the legal adviser (as contended by the appellant) that there was no CCTV footage of the custody suite. Similarly, there were prolonged passages in the transcript about the exact nature of the CCTV discs (as summarised at paragraphs 13, 17 and 18

above); yet, if the appellant is right that he only received disclosure of the CCTV after his conviction, none of this conversation could have taken place. 39. We should add finally that, when we returned to court to give our decision, Advocate Gollop asked if the appellant might address us before we announced our decision. We allowed the appellant to do so and he requested that, before we reach our decision, he should be allowed to listen to the tapes and review them against the transcript of the hearing before the Magistrate's Court. This was on the basis that, as described at paras 37 and 38 above, the transcripts were completely wrong. 40. We declined to adjourn the matter for that reason. The appellant had given no good reason to think that there was any difficulty with the transcript and indeed the nature of his allegations as summarised above were not credible. In any event, it is always open to an appellant or his legal adviser to approach the Greffier of the Magistrate's Court prior to the hearing of an appeal and arrange to listen to the recording of proceedings in that court so as to check the accuracy of the transcript. There was no reason why this could not have been done on this occasion. We proceeded therefore to announce our decision. 41. For the reasons which we have given, we dismissed the appeal against conviction. We should add that the transcript records the appellant as having said to the Magistrate that he had already "sacked" two advocates and, as mentioned above, he was critical of Advocate Gollop's conduct of the appeal before us. We wish simply to record that it appeared to us that Advocate Gollop conducted the appeal very competently and said everything that could properly be said in support of the appellant's case. Authorities Milho-v-AG

[2000] JLR 363 . Vibert-v-AG

[2012] JRC181. Page Last Updated: 16 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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