

**Judgment 36/2010**

**Sharon Rose Burtenshaw – Royal Court  
(Criminal Appeal No. 4 of 2010) –  
1<sup>st</sup> November, 2010**

---

**Criminal appeal from the Magistrates Court – appeal from conviction on two counts, assault on police and resisting police – appellant was not advised by the Judge of her right to give evidence or remain silent, immediately prior to her giving evidence from the witness – whether this constituted a major procedural irregularity – appellant had been advised of her rights at the beginning of the trial – no such thing as a ‘perfect’ trial but this was a fair one – appeal dismissed.**

**THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

1st day of November, 2010 before John Russell Finch, Esquire, Judge of the Royal Court sitting alone

In the action of THE LAW OFFICERS OF THE CROWN against SHARON ROSE BURTENSCHAW (“the Appellant”) to pursue the appeal of which the said Burtenshaw gave notice against the conviction imposed upon her by the Magistrate’s Court on the 16<sup>th</sup> day of April, 2010 in the terms attached hereto;

WHEREAS on the 15<sup>th</sup> day of October, 2010 THE COURT heard Advocate C.J. Green for the Appellant and Crown Advocate F. Russell and ADJOURNED the matter for Judgment to be handed down in due course.

THE COURT this day handed down Judgment in the attached terms and DISMISSED the appeal.

S M SIMMONDS  
Her Majesty’s Deputy Greffier

IN THE ROYAL COURT OF GUERNSEY

Between

SHARON ROSE BURTENSHAW

Appellant

and

THE LAW OFFICERS OF THE CROWN

Respondents

Appeal against conviction by the Magistrate's Court  
On 16<sup>th</sup> April 2010

Appeal heard on: 15<sup>th</sup> October 2010

Judgment handed down: 1<sup>st</sup> November 2010

Before: John Russell Finch Esq., Judge of the Royal Court

Advocate for the Appellant:

C J Green

Advocate for the Respondents:

F M Russell

**Cases and Statutes referred to:-**

*Carter (1960)* 44 Cr. App R 225

*Ellis (1973)* 57 Cr App R 571

*Williams (1977)* 64 Cr App R 106

Blackstone's Criminal Procedure (2009 edition) paragraph 17.44  
European Convention on Human Rights, Article 6

**JUDGMENT**

**Background**

1. On 16<sup>th</sup> April, 2010, the Appellant (hereafter "A") was convicted after a full trial by the Magistrates' Court of two offences: assault on a police officer in the execution of his duty and resisting police officers in the execution of their duty. She was sentenced to 50 hours Community Service on each count concurrently and ordered to pay £100 compensation to the officer on the first charge. She appeals against conviction only. At her trial she was not legally represented, but has had the advantage of being represented by Advocate Green for the appeal. Both Advocate Green and Crown Advocate Russell, for the Law Officers, have produced helpful skeleton arguments that were developed at the oral hearing. At the end of that hearing I indicated that I would produce a written judgment as expeditiously as possible, which I now do.

2. Advocate Green concentrated his submissions on his main point, although not his only one. This is referred to at paragraphs 14-18 of his skeleton. It was suggested that the Judge of the Magistrates' Court failed to advise the (unrepresented) defendant of her right to give evidence or be silent at the end of the Prosecution case. This "failure" should lead to the quashing of the convictions, see especially Carter (1960) 44 Cr App R 225 (enclosure 4 in the skeleton) and Blackstone paragraph 17.44 (enclosure 5). It is accepted that A was given an explanation at the beginning of the trial, see page 4 of the transcript at B-D. The words used were:

*"What is going to happen today is this. Crown Advocate Russell will set out briefly what the allegation is. Then she will call each of the witnesses. Then you will be able to ask questions of each of those witnesses after Crown Advocate Russell has asked her questions.*

*Then at the conclusion of their evidence I will turn to you and ask you if you wish to give evidence. It's a matter for you. You're not in law compelled to give evidence. It's a matter for you whether you give evidence or not.*

*If you give evidence, after you have finished telling me what it is you wanted to say under oath Crown Advocate Russell will be able to ask you questions."*

3. It is plain from when A went into the witness box that this was not repeated (pages 128-129 of transcript). She was asked by the Judge of the Magistrates' Court: "Do you want to come round now?" and replied by asking "Can I read my letter?" (page 129-B).
4. It is submitted that the failure to advise A on her rights on giving evidence at that "appropriate stage", constitutes a major procedural irregularity in the case. The earlier warning at the start of the case was insufficient and inadequate, thus compromising the unrepresented party's rights. Particular importance was placed on the case of Carter (Supra). The decision whether or not to give evidence was best made at the end of the Prosecution case and there was a fairly fundamental defect. In the words of Blackstone (Supra):

*"The accused should always be told by the court at the end of the prosecution case of his right to give evidence himself, to call witnesses in his defence (whether or not he himself goes into the witness-box) or to stay silent and call no evidence. Failure to give the accused this information may lead to any conviction being quashed (Carter .....)."*

5. I note that although A was not specifically advised of her right to call witnesses, her ex-husband was called as a defence witness on the second day of the trial, being unable to remain in Court on the first day.
6. Everything was done wrongly in the Carter case. The trial judge failed to advise the unrepresented accused that he could call his brother-in-law (who was present) as a witness and commented in the most adverse terms on the lack of documentary evidence to support the accused when he had not brought any with him and had explained the reason in his evidence. As the Court of Appeal concluded, the accused had not had a "fair" trial. There can be no such complaint about the present case, where the Court was at pains to ensure A had a full opportunity to put her case, allowed an adjournment to call a witness and gave a very full and reasoned decision. A is plainly a loquacious woman (as contended by the Prosecution) and the transcript indicates she was anxious, if not bursting, to give her side of the case. It may indeed have been good practice to remind A of the position on giving evidence at the end of the Prosecution case, but the early warning was full and sufficient. The procedure was not unfair.
7. Advocate Green argued another point, but less strongly. A never entered a not guilty plea to the charge of assault. This was drawn to the attention of the Court at page 128-D and it was

explained to A at page 129-B that the Court was proceeding on the basis of a not guilty plea, just before A gave evidence. Advocate Green referred to the case of *Ellis (1973)* 57 Cr. App R 571, where a guilty plea was made by counsel and the matter was resolved with a venire de novo. Advocate Green frankly recognized that the later case of *Williams (1977)* 64 Cr. App R 106 was a difficulty, as it was accepted that a waiver of arrangement was implied, even where the accused had not pleaded and counsel were present and not objecting. *“It does not seem to this Court, at any rate to the present day, that the same fundamental objection exists where a plea of not guilty is vicariously offered or tacitly conveyed. It is difficult to conceive what possible prejudice to an accused person could derive from such a procedure”* (Shaw LJ at page 109). The fundamental difference from *Ellis* was that there was, as in the present case, a contested trial throughout. Even though A was not legally represented in the present case, it is not possible to see what prejudice accrued. The reason is that there was none. The technical point made by Advocate Green might have had some relevance (though with respect, little value), had he been arguing some years ago in England on the formal arraignment process in front of a jury, but not in the present circumstances.

8. Various other points were touched upon, but not in any detail. Individually and taken together they have no value and it is not proposed to refer to them.
9. There is no such thing as a “*perfect*” trial, but this was a fair one and A had a very full opportunity to put her case and fight her corner, which she did at some length. Upon stepping back and looking at the case as a whole there is no doubt that the requirements of Article 6 of the ECHR were met; something which is instructive as a final check-list in these cases. The technical points made are of little weight and there is no reason to impeach the conviction. A was not prejudiced and the procedure adopted was more than adequately fair to her. Hence this appeal fails and is dismissed.
10. Appeal dismissed.

**J R Finch**  
**Judge of the Royal Court**