Judgment 38/2008 **Gary Martyn Allen – Royal Court (Criminal Appeal No 14 of 2008) – 24 November 2008**

Criminal appeal from the Magistrate's Court – assault – appeal against conviction, the Magistrate having accepted the Prosecution version of the facts after a 'Newton' hearing – Article 6(1) of the European Convention on Human Rights – court must give reasons for its decision – held that the decision in this case more than fulfilled the duty of the Court under Article 6 – appeal dismissed

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 24th day of November, 2008 before John Russell Finch, Esquire, Lieutenant Bailiff sitting alone.

No.16 of 2008

In the action of THE LAW OFFICERS OF THE CROWN against GARY MARTYN ALLEN ("the Appellant") to pursue the appeal of which the said Allen gave notice against the conviction imposed upon him by the Magistrate's Court on the 4th day of September 2008;

THE COURT, having on the 6th day of November, 2008 heard Advocate C.J. Green for the Appellant and Crown Advocate F. Russell thereon, and having reserved judgment, this day ISSUED JUDGMENT in the attached terms and DISMISSED the Appeal.

S M SIMMONDS
Her Majesty's Deputy Greffier

Approved Text
24/11/2008

In the Royal Court of Guernsey
Appeal against Conviction (Newton Hearing)

Gary Martyn ALLEN (Appellant)

-V-

THE LAW OFFICERS OF THE CROWN (Respondents)

Date of hearing: 6th November 2008

Date of Judgment handed down: 24th November 2008

Before: John Russell Finch Esq., Lieutenant-Bailiff and Jurats

Advocate for the Appellant: C J Green
Advocate for the Respondents: F M Russell

Cases and texts referred to:-

1 Hadjianatassiou v Greece [1993] 16 EHRR 219
2 Law Officers v Diment (1993) 16 GLJ 40
3 McKerry v Teesdale And Wear Valley Justices (2000) 164 JP355
4 R v Cairns [2003] 1 WLR 796
5 R (on the application of McGowan) v Brent Justices [2002] Crim LR 412

Background

1. On the 22nd August, 2008 following a "Newton" hearing, the Magistrate found that the Prosecution version of the facts on an assault charge was made out, having heard evidence. On the 4th September, 2008 the Appellant received a sentence of five months imprisonment, with effect from 27th June, 2008, plus an order to pay compensation to the complainant, Samantha Julie Vaughan, in the sum of £250.

2. The Appellant, who is still represented by Advocate C J Green, now appeals the findings of the Magistrate. The issue was the nature and extent of the assault.

3. There is no dispute, nor can there be any dispute, that the learned Magistrate correctly set out her task in a Newton Hearing type of case and approached it accordingly (page 49 of transcript, at C – E). In the light of the appeal she stated significantly (page 50-E):

> *"I am satisfied that neither Miss Vaughan nor Mr Allen told me a complete or correct version of events. I suspect this is for reasons: firstly, it was an extremely violent incident over some minutes and it would have been very*

> *difficult for either to recall particularly the sequence of events that occurred; and, secondly, to different degrees, both were not telling me the full truth, albeit for different reasons".*

4. The appeal is grounded on two points (which I summarize from the submissions of Counsel):

   i) As the Magistrate found that the complainant had not told the truth in some area of her evidence, it must be open to question as to whether she did on other issues, "*in such circumstances there should have been a reasonable doubt about the complainant's version of events*".

   ii) The Magistrate failed to deal with the complainant's previous convictions when giving her decision. *"It is submitted that these convictions were sufficiently grave and fresh to call into question her character"*.

   Hence the decision was unreasonable on the facts and wrong in law (see paragraphs 6 and 10 of the Grounds of Appeal produced by Advocate Green).

Submissions

5. Advocate Green developed the points set out in his written Grounds of Appeal and took me to the documents in his bundle. He emphasized the JSB directions on a witnesses' character (divider 2). Particular attention was directed to pages 16-17 of the transcript, which sets out the conclusion of his cross-examination of the complainant. Bad character was central to the issues in this case. Crown Advocate Russell succinctly submitted that a judgment in a summary case is not a summing-up to a jury; it can be presumed that the Magistrate is considering the law properly, as indeed was the case here, unless there is any evidence to the contrary and the reasons were perfectly adequate.

6. I drew the attention of Counsel to the case of *R (on the application of McGowan) v Brent Justices [2002] Crim LR 412* , in particular:

> "*The essence of the exercise in a criminal case was to inform the defendant why he had been found guilty. That could usually be done in a few simple sentences".*

7. The commentary states (*inter alia*):

> *"The extent of the reasons will depend on the material under consideration, provided the reasons demonstrate that the decision was approached logically, and that the principal arguments were acknowledged ……".*

8. Advocate Green noted that the mode of appeal is different in Guernsey, so that there is no equivalent of the case stated through the Divisional Court, nor an appeal by way of re-hearing in the Crown Court.

9. I also drew attention to part of Keene L J's Judgment in *R v Cairns [2003] 1WLR 796 at 802*, in paragraph 35:

> *"There is no reason why a jury should not regard part of a witness' evidence as true but take the position that they cannot rely upon the whole of that evidence. That not infrequently happens and it seems to have happened in the present case".*

Decision

10. Before the implementation of the ECHR, the position in Guernsey was covered by the decision of the Court of Appeal in *Law Officers v Diment (1993) 16 GLJ 40 at 45*, where Le Quesne JA said:

> *"We add, however, that it is desirable that reasons be given for the Court's decision in a case involving, as this case did, lengthy evidence and legal argument".*

11. It is a general principle of Article 6(1) of the ECHR that a court must give reasons for its decision. All courts must *"indicate with sufficient clarity the grounds on which they based their decision"* (*Hadjianatassiou v Greece [1993] 16 EHRR 219* at para 33). In the present case, the learned Magistrate's decision is found from page 49 to page 54 of the transcript and goes into very considerable detail, more so than in a normal contested summary trial. The facts indeed are subject to a most thorough and critical examination. In my judgment a decision along the lines of *"having heard the evidence I find that the version given by the Prosecution is essentially correct and will sentence on that basis"* would have sufficed – even though some more detail might be desirable. The decision in *McKerry v Teesdale and Wear Valley Justices (2000) 164 JP 355* is still good law - it is sufficient to indicate the basis of a decision without going as far as a judgment or using an elaborate form. It needs to be noted that in the absence of the case stated procedure, the facts should normally be set out adequately so that the basis of the findings is understood.

12. A Magistrate does not have to sum up themselves with the JSB directions to hand. Although reference may sometimes be made, depending on the circumstances of the case, to matters such as good character, corroboration or burdens of proof, it is not necessary. To suggest that the Magistrate should have directed herself in the way set out on behalf of the appellant is unreasonable and unnecessary.

13. Nothing further needs to be said on the first ground of appeal (see para 3(i) above) as it is self-evidently incorrect. The observations of Keene LJ mentioned in para 6 above are but one example of the universally acknowledged practice. Nor is it necessary for the learned Magistrate to have alluded specifically to the complainant's convictions. The decision in this case was long, reasoned and detailed. It more than fulfils the duty of the Court under Article 6 and the decided cases, and this appeal is misconceived on both grounds.

14. Appeal dismissed.

