

Judgment 19/2012

**Michael McGrath v Law Officers of the Crown
Royal Court
20th April 2012**

Royal Court, appeal against conviction – indecent assault on 10 year old girl – no good character direction – appeal dismissed.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 20th day of April, 2012 before John Russell Finch, Esquire, Judge of the Royal Court, sitting alone.

2011 No.7

THE LAW OFFICERS OF THE CROWN against
MICHAEL MCGRATH (“the Appellant”) to pursue the appeal of which the said gave notice against the conviction imposed by the Magistrate’s Court on the 8th day of June, 2011 in the terms attached hereto.

WHEREAS on the 21st day of March, 2012 the Court heard Advocate C.J. Green for the Appellant and Crown Advocate G.D. McKerrell, DISMISSED the appeal and adjourned the matter for Judgment to be handed down in due course.

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

A J NICOLLE
Her Majesty’s Deputy Greffier

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Between

MICHAEL McGRATH

Appellant

V

THE LAW OFFICERS OF THE CROWN

Respondents

Appeal against Conviction heard on: 21st March 2012

Judgment handed down: 20th April 2012

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

Counsel for the Appellant: Advocate C J Green (who did not appear below)

Counsel for the Respondents: Crown Advocate G D McKerrell

Cases and materials referred to in the Judgment:-

Helle v Finland (1998) 26 EHRR 159;

McKerry v Teesdale and Wear Valley Justices (2000) 164 JP 355;

R v Brent Justices (on the application of McGowan) [2001] EWHC Admin 84

JUDGMENT

Introduction

1. On the 27th May, 2011 the Appellant (hereafter “A”) was convicted in the Magistrates’ Court of one charge of indecent assault on a girl aged 10. This followed a fully contested trial. On 26th June, 2011, A was sentenced to five months’ imprisonment plus 18 month extended licence supervision. He was bailed pending an appeal against conviction. This case has taken much longer than is usual or desirable (particularly in matters of this nature) to be determined due mainly to A’s change of Advocate and a bout of ill-health. On 21st March 2012, I heard A’s submissions and those of the Respondent (hereafter “R”). I indicated, as it was appropriate to finalise the result there and then, that after considering the points raised, the appeal was dismissed and reasons would be given shortly afterwards, which I now do.
2. There was only one issue raised at the appeal and both Advocates argued it in an admirably concise and clear way. The Judge of the Magistrates’ Court when giving his reasoned decision made no reference to A’s admitted good character, which had been put before the

Magistrates' Court. It is suggested that the Judge therefore did not direct himself appropriately and that this alleged failure renders the conviction obviously and palpably wrong, or, there was a miscarriage of justice. I had helpful written submissions from both Counsel well in advance of the oral hearing and their arguments simply built upon and emphasized the main elements of those written submissions.

The Law

3. There used to be no giving of reasons in most Magistrates' Court cases in England. The Bench would frequently say, very simply, that they found the case proved, or it was dismissed. Nowadays both the common law and the requirements of Article 6(1) of the European Convention on Human Rights require the articulation of reasons, though this is still not necessary in acquittals. At common law, in England and in Guernsey, the adequacy of reasons depends on the nature of the case. A decision to prefer one medical expert to another would require some detail, a decision to convict a person of speeding would normally not. There are plenty of cases where the reason for the decision will be implied from the decision itself.
4. When summing-up in a contested trial on Indictment it is necessary, where the situation requires it, for a full good character direction to be given along the lines set out in the suggested draft instructions produced by the Judicial Studies Board. Failure to do so may very well vitiate any subsequent conviction. In cases of this type it is second nature for judges to recite a form of words very much like that put forward by the J.S.B., frequently with no variation. But summing-up to a lay Jury (or Jurats) is a different process from giving a verdict in a summary tribunal. The case of *R v Brent Justices* (on the application of McGowan) [2001] EWHC Admin 84 cited on behalf of R is apposite here. At paragraph 12 of his judgment, Tuckey LJ cited the Strasbourg case of *Helle v Finland* (1998) 26 EHRR 159, at paragraph 55. This decision states (inter alia) that:

"The extent to which the duty to give reasons applies may vary according to the nature of the decision at issue".

At paragraph 13 of his judgment, Tuckey LJ cited the judgment of Lord Bingham CJ in *McKerry v Teesdale and Wear Valley Justices* (2000) 164 JP 355 which included the observation:

"It is, however, as I think the law that justices are not obliged to state reasons in the form of a judgment or to give reasons in any elaborate form..."

Tuckey LJ agreed that this (and other observations) still accurately states the law "in the post Human Rights Act era". He added, helpfully:

"Magistrates threatened by defending lawyers with a big stick of Article 6 should stand their ground with these principles in mind".

In his concurring judgment Silber J referred to the *Helle* case (Supra) and quoted paragraph 66 of that decision, which indicated that Article 6 of ECHR:

".....obliges the Court to give reasons for their judgments but cannot be understood to require a detailed answer to every argument. The question whether a Court has failed to fulfil this obligation to give reasons can only be determined in the light of the circumstances of the case".

Perhaps most importantly the straightforward observation by Tuckey LJ in paragraph 18 of his judgment distils the issue very well:

“The essence of the exercise in a criminal case such as this is to inform the defendant why he has been found guilty. That can usually be done in a few simple sentences”.

5. In my judgment the right to a fair hearing (which is required both under common law principles and the ECHR) carries with it an obligation to give reasons, although a detailed answer to every argument is not needed. The decision must contain reasons sufficiently adequate to demonstrate that the essential issues raised in the case have been dealt with and resolved. An examination of the decision shows a more than sufficient exposition of the case. For example, at page 74-F of the transcript the Judge finds that the child complainant was:

“A thoroughly convincing witness. I have no doubt that the account that she presented was the truth. I am sure that it was”.

6. This followed a decision that went beyond the detail required. I put it in argument that a simple judgment to the effect of: “I have heard the evidence, I believe the Complainant and disbelieve the Defendant and am sure that the Complainant is telling the truth. I find the case proved.” would be adequate and I consider that to be a correct observation. But the details set out by the Judge of the Magistrates’ Court, is more than adequate in the light of the English authorities cited. It follows that not every point needs to be covered in a summary trial, otherwise decisions would be over-long, too elaborate and a happy hunting-ground for the type of artificial nit-picking that is the logical corollary of A’s submission in this appeal.
7. It is also worth mentioning that in the sentencing process, at page 75-G and also at page 75-H the good character of A was mentioned and it was made clear that this was considered throughout the trial. This is not an ex post facto gap filling, but a straight forward reference back to what was considered. Although helpful, these observations are not necessary to validate the decision.

Conclusion

8. A decision in a summary trial should not be approached in the way a summing-up is looked at for appeal purposes. Provided the basic point made in the McGowan case, referred to at paragraph 4 above is done properly and an accused knows why he had been found guilty, then that is all that is required. To suggest otherwise is unnecessary and unreal. The appeal failed and was dismissed.
9. Appeal dismissed.