Appeal against Conviction in the Magistrate's Court, with it submitted that the verdict cannot be supported having regard to the evidence.

[2022]GRC009

IN THE ROYAL COURT OF GUERNSEY

Appeal against Conviction in the Magistrate's Court

Between:

LAURENCE GRAHAM — **Appellant ("A")**

-v-

THE LAW OFFICERS OF THE CROWN — **Respondents ("R")**

Application heard on: 1st March, 2022

Decision handed down on: 8th March, 2022

Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff

Counsel for the Appellant: Advocate S J Maindonald

Counsel for the Respondents: Advocate M Davies

(NB. The transcript, in error, refers to Advocate M G A Dunster)

Materials referred to in Judgment:

X v Law Officers of the Crown (Judgment 27/2013);

Birnie v Law Officers of the Crown (Judgment 41/2014);

Law Officers of the Crown v Ogier and Le Noury (1989) 7 GLJ 17;

Pinto, Loreto and Almeida v Law Officers of the Crown 2013 GLR 83;

A v B 2007-8 GLR Note 22.

The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988;

The Court of Appeal (Guernsey) Law, 1961.

J U D G M E N T

Introduction

1. On 12th October, 2021, the Appellant was convicted of a charge of burglary and theft of items from the house of his wife from whom he was separated. The charge read:

> "THAT YOU, on 23rd February 2021, having entered as a trespasser, a building known as Mulberry, La Rue de La Corbinerie, St Martins, stole therein post, lingerie and

personal items belonging to Elaine Kennedy: contrary to section 9(1)(b) of the Theft (Bailiwick of Guernsey) Law, 1983, as amended."

A was sentenced to 6 months' imprisonment, suspended for a period of 2 years, with effect from 17th November, 2021.

The only witnesses (apart from agreed evidence) were the complainant and A. Both sides were legally represented. At the conclusion of the hearing the judge gave a reasoned decision, which extends over 18 paragraphs in the transcript. A now appeals this conviction and oral arguments were heard from both counsel supporting their written submissions.

2. It is submitted that the verdict cannot be supported having regard to the evidence. Specifically, criticism is made of the Judge's finding that the offence was committed within a 4-minute window of opportunity, insufficient for the carrying-out of the crime alleged. Also, the Judge placed too much reliance on the complainant's evidence and "failed to assess the relevance of other live proceedings". (Which from the transcript, especially at page 39, D-H relates to the question of the residence of the children of the family.) This is not a point which was developed in oral argument.

The Test

3. In considering such an appeal, the principles are very well-settled and described fully by the then Deputy Bailiff in X v Law Officers of the Crown (judgment 27/2013). In Birnie v Law Officers of the Crown (Judgment 41/2014) the same basic principles were applied. In view of consistent authority, both in Guernsey and England, these principles are unarguable. Firstly, the Royal Court approaches such appeals on the basis of what is set-out in the Court of Appeal (Guernsey) Law, 1961, see Law Officers of the Crown v Ogier and Le Noury (1989) 7 GLJ 17. A verdict can only be set aside if it is "obviously and palpably wrong". Where a trial judge, as in this case, has seen the witnesses, his decision is only likely to be over-turned if perverse and if no reasonable tribunal could have made it. In the Birnie case, reference was made to a civil appeal A v B 2007-8 GLR Note 22, which indicated that, "There is a presumption that the findings of fact by the Magistrate and his decision on them were correct and they should be accepted by the Royal Court unless perverse". This approach was fully endorsed by the Court of Appeal in Pinto, Loreto and Almeida v Law Officers of the Crown 2013 GLR 83.

The Decision

4. At paragraph 13 of his judgment, the judge said:

> "… the Defendant just did not convince me at all that he has told the truth today. I do not believe that he has, and I therefore reject his evidence."

(The judge had carefully set-out the burden of proof lying on the Prosecution at paragraph 2 of his judgment in impeccable terms.)

At paragraph 17, the judge concluded:

> "So, in short I am satisfied so that I am sure that the defendant knew that Miss Kennedy was not at home, that he wanted snoop, and he did so by entering her home. I am sure that he took the items that were recovered and, as for the actual items mentioned in the charge that have not been recovered, I am sure that he took those also, even if they have not since been found."

(Items of packaging belonging to the complainant were found at D's home in a bin. The judge rejected his explanation at paragraphs 11-13 of the judgment.)

5. It should be noted that although reasons have to be given in the trial of offences in the Magistrates' Courts of England, they are normally considerably shorter. It would, for example, not be unusual for a case such as this to be decided on wording such as "I have considered the evidence, reject the defendant's account and am sure the complainant's account is true. The case is proved". Indeed, in this case, that is what the decision amounts to.

Merits

6. The appeal, in order to succeed, must surmount a high hurdle. As indicated, the authorities are clear and consistent. This appeal is not a re-trial. The specific issue of the "4-minute window" referred to in A's written and oral submissions, is as R correctly submits (at paragraph 17 of the skeleton argument): "entirely a question of fact for the Judge hearing and assessing the evidence to address". A admitted in cross-examination that he had seen the complainant in a shopping queue at the nearby Marks and Spencer Food Hall. She was some way behind A and A would have known that in the nearby house he would not have long to act before she returned. The burglary was not, as are most of such offences, a ransacking, which would require more time. The person who committed this offence was very purposeful.

7. The trial judge saw and assessed the witnesses. He was entitled to reach the decision he did. It is not for this Court to interfere with such a decision unless perverse or one that no reasonable tribunal could have made. It should be noted that during the course of A's evidence, he referred to the account he had first given to the Police about not visiting the house that day (at 33-F and 34-B). In his interview, the Police had (mistakenly) referred to the presence of CCTV cameras nearby. Only when this was mentioned did A say he now remembered stopping at the house. He agreed he had been "caught out" in cross-examination. The skeleton put forward on behalf of R is right to suggest (paragraph 12) that, "Such changes in evidence are crucial to a trial judge's appraisal of the evidence heard before him". But even without this, the decision was one the Judge was fully entitled to make, having heard the evidence.

Decision

8. This was a matter of fact and based on the Judge's evaluation of the evidence. He directed himself correctly on the incidence and burden of proof and came to a decision that cannot in any way be questioned on appeal and is in no way perverse, despite Advocate Maindonald's economical and clear submissions.

9. Appeal Dismissed.

J R Finch, O.B.E.,

Lieutenant Bailiff

Dated this, 7th March, 2022