2023]GRC071

IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)

Between:

THE LAW OFFICERS OF THE CROWN

Prosecution

-AND-

MATTHEW BAMFORD
-and-
STEVEN HATTON
-and-
SIMON MCCARTHY
-and-
RENE OZARD
-and-
BILLY TRUFFITT

Defendants

Application by the Prosecution for Ruling on Defective Counts on an Indictment

Case heard on: 11th September 2023

Decision communicated on: 13th September 2023

Perfected judgment: 18th December 2023

Before: Catherine Maureen Fooks, Judge of the Royal Court

Counsel for the Prosecution: **Crown Advocate C G Dunford**

Counsel for the Defendants: **Advocate S E Steel appeared for the First Defendant (MB)**
Advocate C A Tee appeared for the Second Defendant (SH)

Advocate C J Green appeared for the Third Defendant (SMcC)
Advocate L C Roffey appeared for the Fourth Defendant (RO)
Advocate S Mallett appeared for the Fifth Defendant (BT)

Legislation, texts and cases referred to in Decision:

Public Order (Bailiwick of Guernsey) Law, 2006
Law Officers of the Crown v J Baker & B Watson [2023] GRC016

Introduction

1. All five Defendants were involved in a fight at the Harbour Lights Public House ("HLPH"). They were committed to the Royal Court on 29 March, 2023 on a charge of violent disorder contrary to section 2 ("section 2") of the Public Order (Bailiwick of Guernsey) Law, 2006 ("POL"). There were several Plea and Directions Hearings at which the Indictment was discussed. A Revised Indictment was presented on 29 June 2023, count one of which was the existing violent disorder but omitting Mr Bamford's ("MB") name and counts 2 and 3 of which were charges against MB of assault and threatening behaviour contrary to section 4 of the POL. It is clear that this was a pragmatic decision taken by the Prosecution to avoid a trial as MB was going to enter and maintain a not guilty plea to the section 2 charge. On 29 June 2023 the Defendants entered Guilty Pleas to the counts on the Revised Indictment.

Background /Submissions

2. The Royal Court sentencing hearing was scheduled for 23 September 2023. I am told that in the course of preparation of the Prosecution Outline for the sentencing hearing Advocate Watson spotted that count 3, the section 4 offence, is summary only so cannot be tried by the Royal Court. This is a clear Prosecution error. No-one disputes that it is an error. On 7 September 2023 the error was drawn to my attention. I was asked to set a review and to indicate my views on the proposal that MB would face only the assault charge in the Royal Court and face the section 4 charge in a Magistrate's Court to be constituted by me immediately after the Royal Court sitting.

3. On 11th September, at the review hearing, I heard submissions on the above proposal in the course of which it became apparent that there was a second issue, namely that Count 1 appeared to be confined to events inside HLPH, whereas there had been further activity outside involving MB (covered by Count 3) and Mr Hatton ("SH"). Crown Advocate Dunford, Advocate Steel (for MB), Advocate Tee (for SH) and Advocate Green for Mr McCarthy ("SMcC") were supportive of the proposal that MB be sentenced by MC for the charge of threatening behaviour. There was discussion as to whether the intention of the Prosecution and understanding of the Defendants was that SH's conduct outside was part of the offending behaviour. Crown Advocate Dunford conceded that Count 1 appeared to be confined to activity inside the HLPH.

4. Advocate Roffey for Mr Ozard ("RO") and Advocate Mallett for Mr Truffitt ("BT") objected to the proposal that MB be sentenced separately for the offence outside HLPH. Advocate Roffey objected on the basis that the incident should be viewed as a whole in fairness to all the Defendants and that the separation of sentencing into two Courts for MB was artificial and could lead to different sentences for him from those received by the other Defendants even though it was one incident. Advocate Mallett also wanted the Jurats to be aware of the full incident so that the Jurats could assess the different roles of each Defendant (even if they were directed not to sentence MB on the conduct outside) and, in the case of her client, reduce his starting point as he was not involved in the outside altercation. Crown Advocate Dunford

described these objections as based on abuse of process and questioned the value of such "mitigation".

5. Following an adjournment to enable counsel to consider the points raised, Crown Advocate Dunford confirmed his wish to proceed on section 4 charge against MB in the Magistrate's Court and wanted me to indicate whether I would stay those proceedings based on what he described as Advocate Roffey and Advocate Mallet's "abuse of process" arguments. He proposed a direction to the Jurats to ignore events outside as respects MB, (who would be sentenced by the Magistrate's Court) and as respects SH, (as Count 1 only covers events inside the HLPH), but that the Jurats could, if deemed appropriate, give the other Defendants credit for not being involved outside.

6. I received further written submissions from counsel, the most significant were from Advocate Roffey, whose submissions were adopted by Advocate Mallet, as follows:

    1. that he is not saying and has no standing to say that section 4 in the Magistrate's Court is an abuse of process;
    2. that the incident should be viewed as a whole, including the conduct of SH and MB outside whether or not they are charged with any offences and it has always been understood that the offending covers the whole incident (notwithstanding the differences in the drafting of the counts which confines the section 2 to the HLPH);
    3. that he proposes to play the footage outside even if the Prosecution does not; and having a section 4 offence sentenced separately in the Magistrate's Court removes from the Royal Court consideration of MB's overall role and runs the risk that his role will be seen as lesser and this is not remedied by a hearing in the Magistrate's Court especially if both Royal Court and Magistrate's Court impose non-custodial sentences.

7. I communicated my ruling below by email on 13th September and it should be read as at that date. I was subsequently asked to issue it as a judgment.

Discussion

8. As I indicated, in my judgment, MB's plea to Count 3 has to be vacated by the Royal Court, as it has no jurisdiction to deal with an offence which is summary only. I refer to my judgment in The Law Officers of the Crown v J Baker & B Watson [2023] GRC016 where a not dissimilar situation arose. I was and am satisfied that the Royal Court has the power to vacate pleas in appropriate circumstances. Once the plea has been vacated, Count 3 is struck from the Indictment. No counsel disagreed with this decision. This leaves MB facing a single count of assault (Count 2) which appears on the face of the count to be confined to activity inside the HLPH.

9. There are two remaining issues:

    1. if the Prosecution seeks to proceed in Magistrate's Court, will I stay those proceedings as an abuse of process (although no one is actually applying for a stay) and;
    2. what is to happen at the Royal Court sentencing in terms of referring to the whole incident/playing the footage from outside the HLPH which is a bigger issue than just in respect of MB as examination of the indictment has revealed that the section 2 offence appears to be confined to events inside HLPH so SH's conduct outside is not captured.

10. It is not uncommon for the Judge who presides over a Royal Court sentencing hearing to sit immediately afterwards as a Magistrate to deal with matters which have remained in the Magistrate's Court as summary only or for other reasons. Those Magistrate's Court matters are, in my experience, unconnected with the Royal Court matters. Sometimes the Jurats are aware of the later hearing in the Magistrate's Court and sometimes they are not. This procedure is possible in Guernsey as we have one Court centre and the Judges sit across all divisions. Advocate Roffey picked up the point I made that, when I sit as a Magistrate after a Royal Court session involving the same Defendant, I naturally have an eye on the Royal Court's sentence and am unlikely to impose a sentence which frustrates the outcome in the higher Court. That said, I must and will sentence what is in front of me. The better point in this case is that the Royal Court and Magistrate's Court can only each sentence on the offending behaviour in front of that court; combined it might cross the custody threshold but separately it might not and that could create disparity between MB and the other Defendants in respect of one incident.

11. In England the higher Courts can deal with any matters, including summary only matters and the relevant legislation would be welcome so that the Royal Court could deal with all outstanding matters for a defendant.

12. Here the proposal is that two parts of the same fight are dealt with by separate charges in separate Courts. Advocate Roffey described this as "wholly artificial" and in my judgment there can be little argument about that. It would be a means of correcting the error made by charging MB with a summary only offence in the Royal Court. It might be also described as pragmatic to ensure that he faces justice for all his criminal conduct on that night as he cannot be sentenced by the Royal Court for what happened outside. In my judgment, it is one thing to deal with unrelated Magistrate's Court offences after a Royal Court sentencing hearing but quite another to split one fight into two (with the very same people "fighting" inside and out) and have a person sentenced for two parts of the same fight by two separate Courts. As a matter of principle MB should be sentenced by one Court and with the others involved in the same incident.

13. If the Prosecution proceeds on the indictment as it is, there will be four facing sentencing for violent disorder for their conduct inside the HLPH and one facing assault for his conduct inside HLPH. The Court will have to work out starting points for all Defendants based initially on the relevant offence then apply aggravating and mitigating factors before setting revised starting points to which to apply plea and personal mitigation discounts. The Court will have to resolve how to account for the different offences charged.

14. So the Question is **now**, with the Indictment as it is, if the Prosecution proceeds what should Jurats be shown or told of events outside? MB and SH do not want the outside events referenced but RO and BT do, even though there will be no charges against SH and MB in respect of those events as RO and BT wish SH's and MB's conduct to be seen as only part of a longer incident. If they are not referenced, RO and BT lose the opportunity to raise their point in mitigation. If they are referenced, there will have to be a direction that they form no part of the sentencing exercise in respect of MB and SH. In my judgment, it is hard to see how, on the one hand, the Court should ignore the conduct outside which forms no part of any count when setting starting points for MB and SH but somehow factor it in as reducing the culpability and role of the others without causing injustice to MB/SH by a loss of mitigation particularly were MB to face a further charge in Magistrate's Court. There would then be a risk of double sentencing for MB and he would be the only one to face a charge for his conduct outside, I have already mentioned the risk that he might receive a lesser sentence by virtue of being sentenced by two separate Courts and my judgement is that, as a matter of principle, he should face sentence for all his conduct in one Court with the others involved. In those circumstances, I consider splitting the charges against him across two Courts to be inappropriate. I consider that the value of such a mitigating point for RO and BT is

questionable in the circumstances we are now in. The Counts on the Indictment are limited to what happened inside and that is where we are.

Conclusion

15. Having considered all representations:

    1. MB's plea to Count 3 will be vacated and Count 3 struck from the Indictment;
    2. I consider that MB should be sentenced for all matters arising from the incident by the same Court and to do otherwise is artificial and risks an injustice to him and other Defendants so I can indicate that I would likely stay any Magistrate's Court charge the Prosecution sought to put on that basis; and
    3. it will be for the Prosecution to decide how to proceed but, if the matter is to proceed on the basis of the indictment as it now is with Counts 1 and 2 only, I do question whether the Jurats should be told or shown anything of what went on outside. Advocate Green wanted to refer to the shaking hands between SH and MB. Again, I am not sure that is a significant point but it could be said in mitigation and is not of itself a reason to play the outside footage.

Post-Script

16. Following receipt of my decision, with the agreement of all counsel, the indictment was revised so that Count 1 was extended to cover events outside the Harbour Lights as well as inside which was relevant particularly to SH and a third count was added in respect of SB, namely of assaulting SH outside the HLPH. I applaud counsel's pragmatism.

Catherine Maureen Fooks
Judge of the Royal Court

18th December, 2023