Perverting the course of justice and 4 offences under the Regulation of Investigatory Powers Law.

[2023]GRC053

ROYAL COURT
FULL COURT

25th September 2023

Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff
and Jurats: Stephen Murray Jones OBE, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin, Felicity Jane Quevâtre and Heather Reed.

THE LAW OFFICERS OF THE CROWN

- v -

AARON JOHN CUSACK

Advocate C J Dunford appeared for the Crown

Advocate A J Ayres appeared for the Defendant

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing 4 Counts. Count 1, perverting the course of justice; Count 2 – 4 offences under the Regulation of Investigatory Powers Law ("RIPL"). The maximum penalties are life imprisonment on Count 1 and 2 years on Counts 2 – 4, now changed for later offences to 5 years. You have been on bail throughout and the cases arise out of your work as a member of the Island Police Force. Before the trial, which related to Count 1, there were two hearings of legal argument before myself alone. You then changed your pleas to guilty in respect of Counts 2 – 4. The Jurats present today were at your trial, where evidence was heard both from live witnesses and in agreed documentary form and you gave evidence in your defence. The verdict in that trial was one of guilty.

The facts are highly unusual and likely unique in this jurisdiction. At the material time these offences took place you were a well-regarded, indeed promising young officer embarking on his first week as a CID member. Count 1 related to a young woman who did not give evidence, and who had made a complaint of rape against a third party. You were paired with an experienced detective to investigate this serious matter. Unknown to your colleagues, apart from one incident which will be referred to later, you had had significant contact with this person before, which you decided to conceal. You knew that she was vulnerable, with a torrid childhood of abuse and although 21 had a reading age of 12. She and her siblings were well-known to the Island Police Force and she required the support of an appropriate adult in any interview. She was plainly very suggestable.

In connection with her allegation an ABE (Achieving Best Evidence) interview had been fixed with the appropriate adult present. The day before this took place, you had rung her up, ascertained she was on her own and proceeded to meet her at her home address. The allegation might have come to nothing but still required a professional and properly conducted investigation. This was actually your first assignment. The background to this matter and the real crux of the case is your relationship with the complainant. You, it has been found, used unlawful means to pressure her to withdrawing her allegation, so as to hide the full extent of your relationship with her. The full details and extent of this cannot now be evaluated, as you failed to comply with RIPL notices for your devices. There had to be a forced extraction which was limited in extent, but did turn up some relevant evidence. You had in 2019 correctly reported that she had sent you a naked image of herself. But it was shown that you did not block her and added her as a contact on Snapchat. The extraction showed that on 19 April, 2021 you had sent a message "*hey*" to the complainant and "*guess*" to her Instagram account. You did not disclose this when tasked with the rape enquiry. Your laptop had two Instagram devices, one in your name and one as "Prev". The latter showed several messages to her. These messages were "*hey*", "*hey*" and "*how are you*" with the "*u*" mis-spelt and a "?" and were from 5 December, 2018 to 17th February, 2019. You denied in interview and in evidence any knowledge of "Prev", which was on your laptop. In July 2019 you messaged this young woman's also vulnerable sister "*You're so beautiful*" and failed to disclose that. You also messaged the sister in April 2021.

You then acted wholly improperly on 18 October, 2021 when you had the complainant's phone. This had, as is laid down, to be submitted for a thorough forensic examination. You put "no" down on the official form in answer to the question whether it had already been examined, which the procedure only allows for in exceptional circumstances. You then, for your own purposes, looked at Facebook messenger, WhatsApp, Instagram and Snapchat. It is not possible to say whether any of the complainant's data was interfered with. It appears that by then you were starting to panic about what might come up about your undisclosed personal contact with her. You were not aware that her phone had had a factory re-set. The next day, having phoned and found she was on her own, you interviewed this young woman without the necessary presence of an appropriate adult. This was a vulnerable person, easily suggestable. The 47 minutes of footage are more telling, much more so, than a simple reading of the transcript. Your bodycam would have been automatically deleted in a month or so and you were taking the chance that the enquiry would have been killed-off by then and NFA'd. We saw it. It is highly disturbing. It would have been bad enough had you been trying to get the case shelved because you felt it was not viable, but much worse when you were acting in your own personal interest as you saw them. To cut to the chase, it disclosed a very disturbing conduct by you. In summary, you repeatedly pressurised a vulnerable person in order to get her to withdraw her complaint of rape against the third party. Examples are "*We will have no choice but to send you to court and prosecute you, ok*?" "*you'll end up in trouble yourself*" and "*you'll end up in court*". There is a whole lot more. You prepared a withdrawal statement and arranged for an unsuspecting colleague to get it signed. The whole aim, we repeat, was to conceal the full detail of your relationship with her. Fortunately, the victim's Social Worker raised the matter, as she was understandably concerned. When she met this young woman after the interview she was quite upset and angry, referring to you as an "arsehole" and feeling "basically pressured".

The RIPL offences Counts 2 – 4 were committed when you failed to comply with Notices signed by the Bailiff. You had earlier agreed to provide your passcodes, provided the devices went to another Force. They went to Jersey. It had been agreed earlier to save your personal embarrassment about some of the images. You did not proceed with the consent you had earlier indicated. There had to be a forced extraction, only partial data being obtained, some of which was relevant.

Sentencing Considerations

Count 1 – perverting the course of justice is uncommon in Guernsey, and previous cases have not involved Island Police officers. We have looked at the large number of reported English cases for assistance. They are not binding upon us, but some are helpful and relevant to today. We refer to some of them now, noting the general guidance of the Court of Appeal in the case The Queen v Abdulwahab

[2018] EWCA Crim 1399. In the Attorney General's Reference No. 34 of 2015 [2015] EWCA 1152, it was made clear that it has long been recognised that perverting the course of justice is so serious and it is almost always necessary to impose a custodial sentence, unless there are exceptional circumstances. Sentencing must be proportionate, as in R v Bunce [2017] EWCA Crim 2567, you are perverting an investigation and not a prosecution. In fact it may be doubtful that any action would have been taken with regards to the allegation of rape, but that is not the point here. Sentencing practice with regards to Police officers generally, was dealt with in R v Nazir [2003] EWCA Crim 901, which is still in accord with present day sentencing practice. There the trial judge said that the public should have absolute trust and faith in their Police officers, who by the nature of their job have extensive powers and responsibilities. Those who do exploit that trust must inevitably serve a prison sentence. The Court of Appeal agreed with these words. They have also gained assistance from Advocate Ayres' reference to R v Tunney [2006] EWCA Crim which is, we consider, consistent with our approach.

Noting these cases, we have a starting-point of 2 years for Count 1. The tawdry excuse you put forward on Counts 2 – 4 about not wishing to reveal pictures that could cause personal embarrassment, is something you share with a number of drug dealers, who seek to hide their business from Law Enforcement using the same line about intimate images. We start at 18 months in total for these three separate counts. We arrive there at a concurrent total, but consecutive to what is imposed for Count 1. These were different offences, with different pleas. The total starting-point for all these offences is 3 years and 6 months.

Mitigation

We have read a helpful Probation Report, which shows that you are still, in effect, unable to accept responsibility for your actions leading to the First Count. We have listened to your very experienced and able Advocate, who has represented you with skill and tenacity throughout. In your favour is the sensible agreeing of evidence, which then shortened the length of the trial, and which the Court of Appeal has told us to take into account, and your obvious previous good character. We note you interfered with an investigation and not a prosecution and we have taken that into account as well. Obviously there is no credit for a guilty plea on Count 1. We reduce the total for the reasons just referred to. This, in our view, amounts to a reasonable discount of ¼. In Count 2 – 4 you did plead guilty in the end, but there was very clear evidence. Nevertheless, erring if at all, on the side of mercy we give a ⅓ discount, based on the pleas, previous good character and reflecting the totality of sentence.

Sentence

We have found it necessary to go into some detail so that the circumstances of this case can be understood. The one feature which is worthy of appreciation is the thorough and efficient investigation of the case by the Police Professional Standards Department, a particularly unpleasant task in a small Force, which was properly dealt with.

It is a tragedy for you. You had a bright future and you are an intelligent person, who had a good reputation and threw it away. In cases such as this, where the Office of Constable is misused, non-custodial sentences are not appropriate. We are aware of the good work done by members of the Island Police, not just in catching criminals or enforcing speed limits, but in many other ways. A case such as this overshadows and negates all this in the minds of many people. Decent Guernsey people still have respect for their Police Force and this offending betrays that respect and your colleagues.

We are aware of the consequences for yourself, but have sought to assess your sentencing fairly. But the bottom line is that you misused your position and bullied this young woman to prevent her from proceeding with a serious allegation, and, moreover, did it for selfish end. We do hope you take advantage of any therapeutic help available.

On Count 1: the sentence is **18 months' imprisonment**.

On Counts 2 – 4: the sentence is **12 months' imprisonment**, concurrent to each other, in total, but consecutive to the sentence on Count 1, total 30 months' imprisonment.

Compulsory Supervision after release for ¼ of the total sentence.

J R Finch, O.B.E.
Lieutenant Bailiff

25TH September, 2023