

Application seeking leave to appeal under section 7(1) of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, as amended. The Applicant asserts that the Royal Court's decision to uphold the acquittal of the Respondent involves a question of law alone (see s 7(2)(a) of the 1988 Law). Application refused.

**[2025]GCA013**

**IN THE COURT OF APPEAL GUERNSEY  
(CRIMINAL DIVISION)  
Court of Appeal No: 528**

**ON APPEAL FROM THE ROYAL COURT OF GUERNSEY**

**Before:**

**CLARE MONTGOMERY KC**

**Between:**

**LAW OFFICERS OF THE CROWN**

**Applicant**

**-and-**

**IAN TOSTEVIN**

**Respondent**

**JUDGMENT**

1. The Respondent was charged with an offence under section 1(c)(ii) of the Summary Offences (Bailiwick of Guernsey) Law, 1982, as amended. The particulars of the charge alleged that “on 13 October 2023 in a certain public place, namely Route De Sausmarez, Castel, [the Respondent] behaved in a disorderly manner.”
2. On 10 September 2024, the Respondent was acquitted in the Magistrates’ Court. A question was certified by the Magistrates’ Court. On 13 February 2025, the Royal Court (Judge Fooks) dismissed the prosecution appeal.
3. On 17 February 2025, the Applicant made an application seeking leave to appeal under section 7(1) of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988, as amended (the 1988 Law). The Applicant asserts that the Royal Court's decision to uphold the acquittal of the Respondent involves a question of law alone (see s 7(2)(a) of the 1988 Law).
4. In accordance with the approach adopted in *Smith v The Queen* [2000] 1 WLR 1644, I consider that the words “a question of law alone” exclude questions of mixed law and fact, such as the question of to whether, on the evidence, a case has been established as charged.
5. Although the Applicant has made reference to s 7(2)(b) of the 1988 Law in the Grounds of Appeal, there is no suggestion that there is any certificate granted by the Bailiff that sufficient grounds of appeal exist in this case. It is a matter for the Applicant whether they seek such a certificate.
6. I have considered the application for leave to appeal on the papers in exercise of the power vested in a single judge by the Court of Appeal (Guernsey) Law, 1961. The question for me is whether the case sought to be brought by the Applicant involves a question of law alone.
7. The question certified in the Magistrates Court read as follows:

*“Q: Where no application is made to amend the charge before a verdict is reached in a trial of an offence of disorderly behaviour in a public place ... if there is evidence that the alleged conduct took place in public, but ambiguous as to whether it was at the precise location stipulated in the charge: a) is this a material defect that should result in an acquittal; and b) if it is material, and rather than acquitting the defendant, is it the role of the judge to give the prosecution an opportunity to amend the charge before returning a verdict: c) if the answer to b) is yes, should the defence be given the opportunity of an adjournment”.*

8. It will be observed that the certified question essentially raised questions of practice and procedure rather than questions of pure law. It should also be observed that it was common ground before the Royal Court that the Magistrates’ Court had wrongly assumed that there was no statutory equivalent in Guernsey to the provisions of section 123(1) and (2) of the English Magistrates Courts Act 1980. This was an error. The provisions of section 6 of the Administration of Justice (Bailiwick of Guernsey) Law 1991, as amended, exactly mirror those English provisions. However, this is not the legal issue raised in this Application and it was not the point certified in the question below.
9. The Applicant criticises the legal reasoning in *Law Officers of the Crown v R* (Royal Court Unreported 26 April 2018) in an effort to identify the question of law that is said to arise in this case. However, in my judgment there is no question of law “alone” involved in *R*. In particular the description of 3 categories of error in the formulation of charges is legally uncontentious. Errors in charging may amount to: “(i) ‘fundamental’ error so that it cannot be rescued by any appropriate and reasonable amendment; (ii) a ‘defect that is substantial enough to require amendment’ (this is subject to the power to adjourn). If such an error is not corrected any conviction is at risk of being quashed by the Divisional Court; and (iii) an error ‘so trivial that no amendment is required’.”
10. The only contentious part of the decision in *R* appears to me to be the determination that the error in that case fell into category (ii), so that in the absence of an application to amend, the charge failed.
11. The decision in *R* does serve to illustrate the point that questions in connection with the sufficiency of a charge will almost always involve questions of mixed law and fact and not questions of law alone.
12. This mix of law and fact is evident in the application for leave to appeal in this case. The Applicant has rehearsed at length the evidence in order to suggest that any error in the formulation of the charge should have been treated as falling into category (iii). Whilst this was an arguable approach, given the admission of the CCTV evidence which could be regarded as providing real evidence of the location of the conduct as on a public bus in or about the Route De Sausmarez (and thus in a public place), I am not able to conclude that the decision to treat the contents of the charge as falling within category (ii) was an error of law, since it was within the range of rational responses available to the court applying legal principles.
13. I observe that this appeared to be the approach taken by the Applicant in the Royal Court where the position taken was that an opportunity should have been given to allow the Prosecution to apply to amend, rather than suggesting that the error in the charge was ineluctably one in category (iii) so that the Royal Court should have substituted a conviction in place of the Magistrates’ acquittal.
14. The only legal issue identified by the Applicant is whether the precise location of disorderly behaviour should be stipulated in any charge under section 1(c)(ii) of the Summary Offences (Bailiwick of Guernsey) Law, 1982, as amended. In my view, that does not give rise to any freestanding question of law that is involved in this case. I do not understand there to be any dispute that an identifiably public place must be specified in any charge, as this is an essential element of

the offence. The only controversy is the degree of specificity required. This is a fact and case specific question. It is not a question of law alone.

15. In the circumstances I am not satisfied that the condition in s 7(2)(a) of the 1988 Law is met. Leave to appeal is therefore refused.