

[2025]GRC018

IN THE ROYAL COURT OF GUERNSEY

Between:

MICHAEL WILLIAM PENNYCOOK

Appellant ("A")

v

THE LAW OFFICERS OF THE CROWN

Respondents ("R")

Appeal against conviction in the Magistrate's Court

Appeal heard on: 6th March 2025

Decision handed down on: 19th March, 2025

Before: John Russell Finch, Esq, OBE, Lieutenant Bailiff

Counsel for the Appellant: Advocate A M Merrien

Counsel for the Respondent: Advocate L Roffey

Materials referred to in judgment:

R v Lucas [1981] QB 720;

Graham v Law Officers [2022] GRC 009;

Graham v Law Officers [2022] GCA 011.

JUDGMENT

Introduction

1. On 17 December 2024, A was convicted in the Magistrate's Court for an offence of assault in relation to a female complainant ("P"). The Magistrate's Court imposed a sentence of 3 months' imprisonment, consecutive to another sentence in respect of a matter which is not the subject of appeal, on 16 January 2025. In addition, a Probation Order for 3 years was made and Judge Davies classed the offence as sexually aggravated. A now appeals against that conviction [submitting] that the verdict cannot be supported and/or is unreasonable.
2. The facts are somewhat unusual. It was stated by the Prosecution that A, a man of 72 years, resided at Flat 10 La Chaumiere, St Peter Port. P lived at Flat 4 and is aged 30. Her partner is female, which is mentioned as it is relevant to the evidence in the case. A was the neighbour,

whom P described as “*just a nice old man neighbour*”. She was coming home from work around teatime and her partner was waiting for her. But before P got there, A asked her for help with the roof of a shed or garage he was building. He had given her a cake outside but said words to the effect that he wanted something in return. A denied this comment which P said did not trouble her. They went to the house, up the stairs. P sent a message to her partner saying “*just helping No. 10*”. A followed her. P claimed that A offered her two alcoholic drinks which were declined. There was, she said, no mention of coffee. Music was put on. A removed his shirt and the Judge below stated in his decision that “*the evidence turns to what I see to be the crux of this case*” (page 68-E). P said that A then said something like “*I’ll turn you straight*”: an assumed reference to her sexuality. He was, P told the Court, flexing his muscles and said something like “*you need a real man*”. A denies this. P said she froze and described that she was “*shitting herself*”. A had gone into the bedroom, she stayed where she was. She did not try to leave at this point. She said “*I’m going home*”, A responded “*No you’re not, I’ve locked the door*”. A denies these comments. He was “*aggressive*” in the way he said it. P saw the keys were in the door downstairs and upon A turning his back, she left. She called the Police two days later. She did not tell her partner immediately.

3. A chose to give evidence. He simply invited P in for a coffee and knew her a little only. He had wanted help with the roof, but first to take a coffee break. He had invited her in because P had said her girlfriend was not at home and to pass the time there at his place. He had locked the door and explained this to P, who said in evidence that she was unaware of the door being locked. A said that she declined the coffee. He said that he never denied taking off his shirt, it was sticking to him. He then put a fresh shirt on. P disagreed with that. He, as the Judge said (page 69-H), “*absolutely and adamantly denies any suggestion*” that he said anything like “*I’ll turn you straight*” or “*a real man*”. But A did say he might have used the expression, “*Haven’t you seen a man before*” when P reacted to him taking off his shirt. Things carried on uneventfully until he simply noticed that P had disappeared without even closing the door behind her. In cross-examination A was adamant P was lying about what she said and what he said and did. He had no idea why she would tell such lies. He cannot say what might be going on in other people’s heads.

The Decision

4. The evidence was outlined very fully and carefully by the Judge of the Magistrate’s Court. The depth and detail given is impressive, resembling in many ways, a full summing-up in a trial on Indictment. There was a question of A’s possibly lying to the Police in the Police interview and the Judge directed himself fully, in accordance with R v Lucas. He found P to be “*a perfectly straightforward and compelling witness*” and her description was given “*calmly and with absolute conviction*” (page 70-H). A was found to be a “*rather unconvincing witness*”. It was found as a fact that A did speak to P in the way she claimed and she was telling the truth in the “*crucial aspect at the heart of this case*” (Page 71-H). At the end of his decision the Judge, having carefully reviewed the evidence, found that he was satisfied so that he was sure, that A acted as was alleged by P and also “*that would have caused and was intended to have caused [P] to fear that immediate unlawful force would be used against her*”, so found the case proved.

The Submissions

5. Full written submissions were produced by counsel for the appeal, and each made cogent oral submissions in line with them. The nub of A’s case is set-out at paragraph 17 of his written submissions. Observing, perfectly accurately, that there was a “*simple conflict*” in the evidence of the two protagonists and that the Judge believed the complainant, it was submitted, that

“there was no clear basis” to make this finding. So, “there is no basis upon which the facts as stated by the complainant might be preferred and that where there was a clear dispute as to the facts, there was not sufficient for the Court to proceed to find the Appellant guilty”. R relies upon the case of Graham v Law Officers [2022] GRC 009, especially paragraph 3. This (reproduced below), is to the effect that findings of fact, where a Judge has seen the witnesses, should be accepted by the Royal Court on appeal “unless perverse”. In the present case, Judge Davies followed the procedure summarised in paragraph 7 of the Graham case, assessed the evidence and was entitled to reach the conclusion he did.

Applicable Legal Principles

6. It seems apparent that there is no dispute here between the parties on the law. R is correct to refer to the Graham case, this is entirely on point, as is the Bailiff’s decision there, refusing leave to appeal further ([2022] GCA 011). Paragraph 3 was referred to above. It was an attempt to summarise the position on appeals of this nature in Guernsey. It reads as follows:

“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.”*

This is the test which applies in a case of the type presently before this Court, and will be followed here. At paragraph 7 of this judgment, the position was summarised in the following words:

“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.”

7. A’s principal submissions have been summarised in paragraph 5 above. It is suggested that “there is no basis upon which the facts as stated by the complainant might be preferred”. With all due deference, the ultimate logic behind such a submission is that whenever a ‘one and one’ case is heard, (such cases are, of course, very common in criminal courts), and the facts are disputed, a guilty verdict might well have no ‘clear basis’. That is manifestly not the situation. Here the Judge of the Magistrate’s Court gave a full account of the evidence and found he believed P and did not believe A, explaining why. He was fully entitled to reach such a conclusion. The benefit of seeing and assessing live witnesses in a trial is that their veracity and accuracy can be weighed. There is no merit at all in this appeal and it fails. The decision reached is unimpeachable.

8. Appeal Dismissed.

J R Finch OBE
Lieutenant Bailiff

19th March, 2025