

CO/2081/2006

Neutral Citation Number: [2006] EWHC 1375 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Wednesday, 17th May 2006

B E F O R E:

LORD JUSTICE RICHARDS

MR JUSTICE TOULSON

THE QUEEN ON THE APPLICATION OF

R

(APPELLANT)

-v-

DIRECTOR OF PUBLIC PROSECUTIONS

(RESPONDENT)

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MR SIMON MURRAY (instructed by Messrs Warner Goodman) appeared on behalf of the
APPELLANT

MR ETHU CRORIE (instructed by the DPP) appeared on behalf of the RESPONDENT

J U D G M E N T
(As approved by the Court)

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Wednesday, 17th May 2006

1. MR JUSTICE TOULSON: One night last August, well after midnight, a 12 year old boy called Mark was out with his sister in Portsmouth. Because of his age I will not use his other name. His sister was arrested on an allegation of criminal damage. Mark reacted badly. He shouted abuse at the police officers and carried on after being told to be quiet. As the police left the scene in a police van, Mark made masturbation gestures at the police officers in the van and shouted, "Wankers". At that point, one of the police officers asked the driver to stop and arrested Mark for an offence under section 4A of the Public Order Act 1986 as amended by section 154 of the Criminal Justice and Public Order Act 1994.
2. Section 4A provides, so far as material, as follows:

"A person is guilty of an offence if with intent to cause a person harassment, alarm or distress, he uses threatening, abusive or insulting words or behaviour, thereby causing that or another person harassment, alarm or distress."
3. This is a graver offence than under section 5 of the Public Order Act which makes it a crime to use threatening, abusive or insulting words within the sight or hearing of a person likely to be caused harassment, alarm or distress. Section 4A requires not only that the defendant used threatening, abusive or insulting or threatening words of behaviour but also that he did so with the intention of causing harassment, alarm or distress and that he in fact caused another person harassment, alarm or distress. Section 4A carries a potential penalty of imprisonment up to six months, a fine of up to £5,000, or both.
4. The matter came to trial at the Youth Court on 26th October 2005. The only oral evidence came from the arresting officer. At the end of the prosecution case an unsuccessful submission was made that there was no case to answer. The defence called no evidence and Mark was found guilty. He appeals against the finding by the Magistrates by way of Case Stated. In the Stated Case the Magistrates recorded that they found as facts that Mark's words and gestures were abusive and insulting, that he intended to cause harassment, alarm or distress to the officers, and that the arresting officer was caused distress by the words and conduct.
5. They posed the following questions for the opinion of this court:

"(a) Were we entitled to conclude for the purposes of convicting Mark that the offence taken by [the arresting officer] an experienced police officer was sufficient in law to cause him harassment, alarm or distress within the meaning of section 4A of the Public Order Act 1986?
(b) Were we entitled to conclude for the purposes of convicting Mark that the admitted gestures and words of Mark, a 12 year old boy, were done with intent to cause [the arresting officer] harassment, alarm or distress within the meaning of section 4A of the Public Order Act 1986?"

6. Essentially, the points of law raised are, first, whether the Magistrates could properly find on the material before them that the officer suffered distress within the meaning of section 4A, and second, whether the Magistrates could properly infer on the material before them that Mark intended to cause harassment, alarm or distress within the meaning of the statute.

7. On the question of the effect of Mark's behaviour on the officer's equilibrium, the Magistrates recorded that in his evidence in chief the officer described his reaction to Mark's conduct as follows:

"I was offended by it. He was a very young, small lad but he was very abusive and had been told to calm down and nobody seemed able to control him. I found it offensive that a lad, or anybody, particularly a lad of that age with a parent, would voice those opinions and make those gestures towards uniformed police officers."

8. In cross-examination, he said:

"Was I annoyed? Not personally, no, but I would say that I found it distressing that a lad of that age [was] out at that hour and acting in that manner."

9. Mr Crorie, for the respondent, submits that the Magistrates were entitled to accept as truthful the officer's statement that he was distressed that a lad of 12 should have been out at such a late hour and behaving as he was towards uniformed police officers. I agree, but the question remains whether the state of mind conveyed by the officer in that answer and his other answers amounted to distress within the meaning of the section.

10. In DPP v Orum [1989] 1 WLR 88, a man was having a row late at night in the street with his girlfriend. When a police officer told him to quieten down, the man swore at the officer and threatened to hit him. A question arose whether this was conduct likely to cause the police officer harassment, alarm or distress within the meaning of section 5 of the 1986 Act. In that context, Glidewell LJ said at page 93:

"I find nothing in the context of the Act of 1986 to persuade me that a police officer may not be a person who is caused harassment, alarm or distress by the various kinds of words and conduct which section 5(1) applies. ... However, that is not to say that the opposite is necessarily the case, namely, it is not to say that every police officer in this situation is to be assumed to be a person who is caused harassment. Very frequently, words and behaviour with which police officers will be wearily familiar will have little emotional impact on them save that of boredom."

11. I quote that passage because of the reference in it to the emotional impact of the words or conduct on the person said to have been affected by it. It was a perfectly understandable use of English for the officer to say that he found it distressing that a small boy of 12 should be behaving as he was, out late at night and under no effective adult control. It was truly anti-social behaviour at a time when Mark ought to have been in bed. But the officer did not suggest that the behaviour caused him to suffer

emotional disturbance and it would be most surprising if it had caused a mature police officer to suffer emotional disturbance. Although the case does not record the physical details of the parties involved, we are told that it is not in dispute that Mark was 4' 9" in height. The police officer was over 6' and weighed over 17 stone. He was, as the Magistrates recorded, an experienced police officer.

12. The question is whether he suffered distress within the meaning of section 4A. The word "distress" in section 4A takes its colour from its context. It is part of a trio of words: harassment, alarm or distress. They are expressed as alternatives, but in combination they give a sense of the mischief which the section is aimed at preventing. They are relatively strong words befitting an offence which may carry imprisonment or a substantial fine. I would hold that the word "distress" in this context requires emotional disturbance or upset. The statute does not attempt to define the degree required. It does not have to be grave but nor should the requirement be trivialised. There has to be something which amounts to real emotional disturbance or upset.
13. Adopting that approach, I do not consider that on the material set out in the Case Stated the Magistrates could, properly directing themselves, have found that the officer suffered distress in that sense. If anything, his evidence was to the contrary, for he indicated that he was not personally annoyed by the behaviour.
14. The issue as to intent raises a parallel point about what it was that had to be intended. The finding by the Magistrates that Mark had the required intent is terse. He doubtless intended to be insulting and annoying, but I do not see on what material the Magistrates could have inferred that the defendant intended to cause the officer real emotional disturbance or upset.
15. The police patrolling our cities have a difficult task but, as has been pointed out in argument, they had other possible ways of dealing with the situation with which they were confronted. We are concerned solely with the issue of law as to the applicability of section 4A of the 1986 Act on the facts found by the Magistrates. For the reasons which I have given, I would rule against the prosecution on the points of law raised and would quash the finding of guilt.
16. LORD JUSTICE RICHARDS: I agree. It follows that both questions raised by the Justices for the opinion of this court are to be answered in the negative. The appeal is allowed and the finding quashed.
17. MR MURRAY: There is no application for costs.