

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 October 2018

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

Between :

ARMANI RAWLINS	<u>Appellant</u>
- and -	
CROWN PROSECUTION SERVICE	<u>Respondent</u>

Catherin Osborne (instructed by **Irvine Thanvi Natas, Solicitors**) for the **Appellant**
Simon Heptonstall (instructed by **CPS Appeals and Review Unit**) for the **Respondent**

Hearing date: 6 September 2018

Judgment Approved

Mr Justice Supperstone :

Introduction

1. This is an appeal by way of case stated against the decision of Justices sitting at Basildon Magistrates' Court on 20 October 2017 to convict him of three charges of assaulting a constable in the execution of his duty contrary to section 89(1) of the Police Act 1996.
2. The Appellant is 21 years' old. He was 20 years old at the time of the incident. He was residing at an address in Barkingside with his parents, Mr and Mrs Rawlins. Police officers attended his parents' house at the request of the Appellant's father because of concerns as to the Appellant's attitude to him.
3. The facts as found by the Magistrates' Court are set out at paragraph 7 of the Stated Case:

“a. The three police officers named in the informations, PCs Jordan, Crome and Ross, attended the Claimant's home address in Barkingside along with two other Officers in response to a telephone call made by Ian Rawlins claiming his son, the Claimant, had returned to the address having been removed the day before following a telephone call made by Ian Rawlins that the Claimant was being aggressive and hostile towards him.

b. On arrival at the property the Claimant was locked in his bedroom. The Claimant's father asked the police to 'have a word with him'. The officers entered his bedroom using a key given them by Ian Rawlins. Upon entering, the Claimant was sat on the edge of the bed with red eyes as if he had been crying.

c. The Claimant did not respond to any initiation of conversation with the officers when they entered his room. He appeared visibly upset and PC Crome and PC Jordan remained in the room and the other officers left. PC Jordan explained that if he did not leave he would potentially be arrested for breach of the peace as he feared either party may come to harm if he remained. PC Jordan suggested he pack a bag and leave the home as if he left there would be no breach. The Claimant then stood up with clenched fists and moved towards the officers aggressively.

d. PC Jordan then arrested the Claimant to prevent a breach of the peace.

e. The Claimant then shouted, 'I'm going to fuck you all up' and swung his arms at the officers, connecting with their heads, which, if the arrest was lawful, amounted to a reckless assault.

f. The Claimant was then removed from the property as he was under arrest for breaching the peace. He was not removed at this point in pursuance of a request by his father to remove him."

4. At the close of the Prosecution case, the Defence made a submission of no case to answer on the basis that there was no evidence that the Appellant was acting unlawfully or unreasonably (or that he was about to do so) when the officers attended. It was argued that the police were therefore acting unlawfully in requiring that he leave the property. The Appellant asserted that the request for him to leave his home was in effect an unlawful eviction as he was entitled to reasonable notice. The Crown's position was that there was no unlawful eviction.
5. At paragraphs 12-16 of the Stated Case the Justices set out their findings.

"12. We found there was a case to answer as we found:

(a) The police officers gave evidence that they had attended the property at the request of the claimant's father.

(b) The officers gave evidence that they reasonably and honestly believed that if they did not arrest the claimant for breach of the peace then such a breach would be committed in the immediate future due to the claimant moving towards them with clenched fists coupled with what they had previously been told by Ian Rawlins as to the claimant's behaviour.

(c) The officers gave evidence that the Claimant swung his arms at them connecting with their heads.

(d) Therefore we concluded that there was evidence on which a reasonable tribunal properly directed could convict.

13. Following the submissions we concluded that:

(a) A constable had power of arrest where a breach of the peace had occurred, there was a threat of a breach of the peace being renewed; and where although no breach had been committed, the person making the arrest reasonably and honestly believed that such a breach would be committed in the immediate future.

(b) The behaviour that caused a constable to believe that a breach of the peace had or would occur had to be related to violence and such a breach occurred whenever harm was actually done or was likely to be done to a person, or in his presence to his property, or a person was put in fear of being so harmed through an assault, affray, riot, unlawful assembly or other disturbance.

(c) There must be the 'clearest of circumstances' and a 'sufficiently real and present threat to the peace' to justify the extreme step of depriving an individual of his liberty who is not at the time acting unlawfully.

(d) The test of reasonableness of a constable's action is objective in the sense of that it is for the court to decide not whether the view taken by the constable fell within the broad band of rational decisions but whether in light of what he knew or perceived at the time the court is satisfied that it was reasonable to fear an imminent breach of the peace. The court must restrict itself to considering the reasonableness in the context of the events of the constable's assessment of the imminence of the breach of the peace. It is not for the court to make its own assessment on imminence.

16. Consequently we found:

(a) The officers had acted reasonably in attending the address at the request of the claimant's father.

(b) The officers reasonably and honestly believed that if they did not arrest the claimant for breach of the peace then such a breach would be committed in the immediate future due to the claimant moving towards them with clenched fists coupled with what they had previously been told by Ian Rawlins as to the claimant's behaviour.

(c) The officers accordingly were acting in the execution of their duty.

(d) There was no evidence to support the contention that the officers unlawfully evicted the claimant at the request of his father and thus no basis on which we might consider the impact of that on the legality of the officers' actions.

(e) The claimant did swing his arms out at the officers, connecting with their heads.

(f) That therefore in light of our findings of fact, the defendant was guilty of assaulting the officers in the execution of their duty."

6. Following this decision the Appellant applied to the Magistrates' Court to state a case. The Justices have duly done so and have sought the opinion of the High Court on the following three questions:

"(a) Was the judge correct to conclude that the statements made by police officers relaying the content of the call made by Ian Rawlins to the police and subsequently his comments to Police when they attended the address were not hearsay evidence and therefore admissible?

(b) On the facts found were we in law entitled to conclude that there were reasonable grounds to arrest the claimant to prevent a breach of the peace?

(c) Was it right for us to conclude that there was no evidence to support a contention that police officers were unlawfully evicting the claimant?"

7. The Appellant does not now pursue the appeal in respect of Question (a). Ms Catherine Osborne, who appears for the Appellant, said it is not submitted that the Justices erred in law by admitting the evidence of content of the call not as hearsay (i.e. for its truth) but rather as relevant to the question of why the police attended the property.

8. I shall consider Question (b) and Question (c) in turn.

Question (b): On the facts found were we in law entitled to conclude that there were reasonable grounds to arrest the claimant to prevent a breach of the peace?

9. Ms Osborne submits that this question should be answered "No", essentially for the following three reasons. First, because the police had no basis upon which to threaten to arrest the Appellant for breach of the peace. She contends that there was no threat observed by the officers until after they threatened to arrest him for breach of the peace, at which point the Justices found that "he stood up with clenched fists and moved towards the officers aggressively". Up until that point the Appellant was behaving lawfully and there was no imminent threat of a future breach of the peace through violence on the Appellant's part. The Justices did not find that it would have been

reasonable for the officers to arrest the Appellant for a breach of the peace on the basis of what they had been told by his father alone. Accordingly the exceptional circumstances that would have justified the Appellant's arrest did not exist. It could not reasonably be concluded that an incident of violence was about to occur.

10. In support of these submissions Ms Osborne relied upon the well-known authorities of *Foulkes v Chief Constable of Merseyside Police* (1998) 3 All ER 705, *Bibby v Chief Constable of Essex Police* (2000) 164 JP 297 and *R (Laporte) v Chief constable of Gloucestershire Constabulary* [2007] 2 AC 105, per Lord Rodger at paras 65-67 and Lord Mance at para 141.
11. It follows, Ms Osborne submits, that prior to the Appellant coming towards the officers with clenched fists, the threat of arrest for breach of the peace was unlawful. That being so the officers were not acting in the execution of their duty when they threatened to arrest him and therefore he had every right to resist the unlawful arrest threatened (*Christie v Leachinsky* [1947] AC 573, per Lord Simonds at 591).
12. Second, Ms Osborne submits that the Justices applied the wrong legal test when considering reasonableness. In the first sentence of paragraph 12(d) of the Stated Case they correctly stated the objective legal test as set out by the court in *Redmond-Bate v DPP* [2000] HRLR 249, per Sedley LJ at paras 5 and 18. However in the following two sentences they fell into error because it is for the court to make its own assessment of imminence (see *Redmond-Bate* at para 5 and *Foulkes*).
13. Third, the officers' conduct in threatening to arrest the Appellant for breach of the peace was not proportionate. There are no findings made by the Justices that the officers considered alternative lesser action than arrest, such as contacting friends and family to consider whether he would voluntarily wish to stay with them overnight or remaining in the premises for a period of time until they were satisfied that the situation had diffused, or leaving the premises and then returning to them within a short time to re-assess the situation.
14. Mr Simon Heptonstall, for the Respondent, submits that the fundamental flaw in the Appellant's argument is to focus, as Ms Osborne did, on the period of time prior to the Appellant standing up with clenched fists and moving towards the officers aggressively.
15. Mr Heptonstall correctly accepts that there was no imminent breach of the peace before that aggressive action by the Appellant. It was the Appellant's physical aggression, in clenching his fists and moving towards them, that could, he submits, properly be regarded as making a breach of the peace imminent.
16. Mr Heptonstall submits that there had been no action taken by any officer which could have justified the Appellant's physical aggression as a proportionate response. PC Jordan had "explained" to the Appellant that if he did not leave he would "potentially" be arrested for breach of the peace, and the officer "suggested" he pack a bag and leave the home (para 7(c) of the Stated Case).
17. Plainly, Mr Heptonstall submits, having regard to that aggression against the background to the incident, the officers acted lawfully in the execution of their duty.

18. In my judgment it is clear from the findings of fact (at para 7(c) and (d) of the Stated Case) and the other findings made by the Justices (at paras 12(b) and 16(b)) that the officers were acting in the execution of their duty when they arrested the Appellant for aggression that could properly be regarded as making a breach of the peace imminent.
19. Ms Osborne's criticism of the test applied by the Justices when considering reasonableness has no relevance to the threatened breach of the peace for which he was arrested, namely his physical aggression against the background of what the officers had previously been told by his father as to his behaviour as Ms Osborne did not suggest that this threatened breach of the peace was not imminent.
20. The issue of the proportionality of the officers' conduct also does not arise when it is understood that the threatened breach of the peace was, in fact, the Appellant's physical aggression and not, as Ms Osborne contended, the Appellant's behaviour prior to that point in time. In any event there was no threat to evict the Appellant for the reasons I set out below.

Question (c): Was it right for us to conclude that there was no evidence to support a contention that police officers were unlawfully evicting the Claimant?

21. Ms Osborne contends that the Appellant was told in essence that he had to leave or he would be arrested. That, she submits, amounted to an unlawful eviction because he was, at the very least, a bare licensee within the premises for whom the occupier had withdrawn permission for him to be there. Accordingly he was entitled to a reasonable period of notice to remove his belongings and find alternative accommodation (*Gibson v Douglas* [2017] HLR 11, per Sir James Munby (President of the Family Division) at para 20). However he was being asked to leave his home, without there being any consideration as to whether he had anywhere to go, and in so doing the officers were acting unlawfully in threatening to arrest him if he failed to leave.
22. I do not accept that at the stage the Appellant stood up with clenched fists and moved towards the officers aggressively that there was any eviction for him to resist, lawful or otherwise. I accept the submission made by Mr Heptonstall in this regard.
23. The relevant findings made by the Justices in this regard as set out at para 7(c) of the Stated Case are, as I have noted, that PC Jordan "explained that if he did not leave he would potentially be arrested for breach of the peace" and "suggested he pack a bag and leave the home". Even if, which I do not accept, what the officer said amounted to an eviction, the aggressive action of the Appellant would have been a disproportionate response to what the officer said.

Conclusion

24. Accordingly, I answer questions (b) and (c) in the affirmative.
25. For the reasons that I have given this appeal is dismissed.