[2018] EWCA Crim 3087

********REPORTING RESTRICTIONS********

No: 201702478 B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 6 September 2018

B e f o r e:

LORD JUSTICE LINDBLOM

MRS JUSTICE MCGOWAN DBE

MRS JUSTICE CHEEMA-GRUBB DBE

R E G I N A
v
PAUL GROWCOOT

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Mr S Hustler (Solicitor Advocate) appeared on behalf of the **Appellant**

Mr A Chalk appeared on behalf of the **Crown**

J U D G M E N T

**********REPORTING RESTRICTIONS*********

LORD JUSTICE LINDBLOM:

1. On 4 May 2017 in the Crown Court at Bradford, before His Honour Hatton Q.C., the appellant, Paul Growcoot, was convicted of an offence of having an offensive weapon (count 1 on the indictment) and an offence of wounding with intent (count 2). On the same day he was sentenced by the judge to 10 years' imprisonment on count 2. No separate penalty was imposed on count 1. He now appeals against conviction by leave of the single judge.

2. The facts of the alleged offences, according to the prosecution, were these.

3. On the evening of 6 August 2016, the appellant went to the home of a man called David Bailey and his partner, Danielle. The appellant and Mr Bailey had been friends. Another man, Charles Collins, was staying with Mr Bailey at the time. An argument developed, it was said, between the appellant and Mr Collins, and the appellant left. In the early hours of the following day, 7 August, the appellant came back. Mr Collins, it was alleged, was struck several times to the head and upper body, with something made of wood – described by prosecution witnesses as being either a baseball bat or a pickaxe handle. This alleged assault was the subject-matter of the alleged offence in count 2.

4. An ambulance was called shortly before 5.30 a.m. Mr Collins was taken to hospital. He had suffered a number of injuries, including swelling to the back of his head, two small wounds at the base of his right ear requiring sutures and a five-centimetre linear wound at the top of his scalp requiring 11 staples.

5. The appellant was arrested at about 2 p.m. the same day. Unprompted, he asked, "How is Charlie, how he is doing? When I left him this morning I didn't think he would need an ambulance". He told the police he had been attacked and had defended himself.

6. When interviewed by the police, the appellant said he had acted in self-defence. He said Mr Collins had spat at him, struck him and insulted him. He had left, but had knocked on the door of Mr Bailey's house about 15 minutes later as he had been upset and wanted to remonstrate with Mr Collins. He said Mr Collins had charged at him and struck him in the face. He, the appellant, had picked up a stick – smaller than a two pence coin in diameter, he said – and had hit Mr Collins three or four times because he had been scared for his life. We shall return shortly to some of the exchanges in the course of that interview.

7. The prosecution case at trial was that the appellant had gone to Mr Bailey's home armed with a weapon – a baseball bat it was said – and had then fulfilled his intention to wound Mr Collins. The defence case was that the appellant had not gone back armed with a weapon. He had armed himself with a piece of wood, or a wooden pole, that he had found

in the garden of Mr Bailey's house on his return. He had done so, it was said on behalf of the defence, knowing what he did of Mr Collins' character. He had wounded Mr Collins but not intending to do so. He had acted, it was said, in lawful self-defence. So the issues for the jury were whether they had been made sure that the appellant had gone to Mr Bailey's home in possession of a weapon with the requisite intention, whether he had intentionally wounded Mr Collins with the weapon, and whether he had acted in lawful self-defence.

8. In his evidence at trial, Mr Collins told the jury that he was a man of 55 years of age, suffering from liver disease and other ailments, which affected his balance, short-term memory and speech. He gave evidence about the incident. The appellant having arrived at Mr Bailey's home, an argument had developed between the two men. The appellant, he asserted, had been drinking strong larger. When asked to leave, he laughed and did not go. Mr Collins said he been arguing with the appellant and had become agitated. He had gone close to the appellant and suggested that they took their argument outside. He admitted having called the appellant "a coward and a punk". The appellant had then left.

9. Later there had been a knock at the door. Mr Bailey had gone to the door and said, "It's Paul, he's got a bat". Mr Collins said he went to confront the appellant, and when he got to the front door, or just outside it, the appellant had taken from behind his back a baseball bat, up to three feet in length, and swung it at him. He had blocked the bat with his arms, backed away and tried to grab it. But he said the appellant had hit him to the head a number of times, causing him to fall against a chair in the yard. After that the appellant had continued to hit him. He, Mr Collins, had been trying to take the bat away from the appellant but found himself struck with it several more times. He and the appellant had ended up in the street. He was on the ground and the appellant came back and hit him again. He, Mr Collins, had not drunk any alcohol that night and he denied having hit or touched the appellant at any time in the house.

10. Mr Bailey also gave evidence. He said the appellant had left about at 12.30 a.m. He had been angry and so too had been Mr Collins, but he had calmed down after the appellant had left. The appellant had returned at about 4.20 a.m. Danielle had answered the door and the appellant had asked to speak to Mr Collins. Danielle had then called him to tell him the appellant was attacking Mr Collins. He went outside and saw the appellant attacking Mr Collins with a baseball bat or pickaxe handle. He confirmed that the weapon had not been a branch from a tree. Mr Collins had gone to the ground and the appellant had carried on attacking him before running away.

11. The appellant gave evidence. His account of events was very different. He said that just after midnight he had called at Mr Bailey's home. Mr Collins had been drunk, and for no apparent reason, had asked him to leave before then striking him. Mr Collins had called him a coward and said he wanted to fight him. He refused and left. But 15 or 20 minutes later he returned because, he said, he had been upset and confused. He had knocked at the door, which was opened, and he asked if Mr Collins was there. Mr Collins, he said, "bustled forwards" with "murderous intent in his eye". He had backed off and picked up a stick from

a tree about a metre in length. He grabbed it and hit Mr Collins twice on the head but Mr Collins had kept coming, so he had struck him twice more, one of those blows on his back, but Mr Collins kept coming. At no time, however, had Mr Collins gone to the ground. He, the appellant, had feared for his life. He had been upset and confused, but not angry. Mr Bailey would have seen Mr Collins rush out at him and would have seen him pick up the stick from a tree, a branch. He had struck Mr Collins three or four times at most.

12. In the course of the trial, the judge made two rulings relevant to this appeal.

13. The first of those two rulings concerned the admissibility of evidence of Mr Collins' bad character. Having heard submissions on either side, he ruled that Mr Collins' previous convictions for assault occasioning actual bodily harm, for wounding, and for sexual assault were not admissible. Those convictions arose from an incident in 2007 when Mr Collins, together with another man, had used a knife to etch a "noughts and crosses board" on the back of a sleeping woman with whom Mr Collins' co-accused had recently had sexual intercourse. Mr Collins and his co-accused had, it seems, played "noughts and crosses" on the woman's back while sexually assaulting her. It seems, and there is as we understand it no dispute about this, that when he ruled on the admissibility of those convictions, the judge may not have been made aware of the full gravity of that offending, which it was said had involved Mr Collins' co-accused raping the victim and both men assaulting the woman with a belt while they were drunk.

14. The second ruling concerned evidence of the appellant's bad character. The judge decided to refuse the prosecution's application to adduce the appellant's previous convictions, including convictions in Italy for threatening behaviour. The prosecution had asserted that the appellant, in his evidence, had misled the jury and had attacked the character of Mr Collins. The appellant had said that he was not a violent person and did not do fights. He had also said that Mr Collins, for his part, was a volatile, violent and intimidating person. The judge observed that the matter was "very borderline", but he was not going to allow the application "in fairness, to try to keep some equality of arms here".

15. The single judge granted leave to appeal only on one ground. The other grounds – relating to asserted discrepancies in the evidence, the failure of the prosecution to investigate Mr Collins' background and the amendment of the charge from assault occasioning actual bodily harm to an offence contrary to section 18 of the 1861 Act – have not been renewed. The judge rejected those grounds as lacking any arguable merit and, as we say, they are no longer pursued.

16. In the ground of appeal on which leave was granted, it is contended that the judge erred in refusing to admit Mr Collins' previous convictions in 2007, which, it was said, were highly relevant to the issue of self-defence. The appellant had been aware that Mr Collins had criminal convictions, even if he was not aware of the detail of them. He had mentioned this in his interview with the police, and had adopted his account given in interview in his defence statement.

17. At trial, the record of the appellant's interview had been edited before being placed before the jury. In the edited version of the interview, the appellant is recorded as saying:

> "... I knocked on the door an' then I stepped a bit back away from the door and then ... I can't remember whether it was Dave or Charlie opened door and then, and then within seconds ... Charlie came charging out and sort of with both fists blazing ... I was worried, I was really scared for my life ... I didn't know whether he was gonna come at me with a weapon ... when the, the previous assault had taken place ... on the Friday two weeks before with my next door neighbour well I know ... he was trying to kill me I was losing consciousness ..."

18. In a portion of the record of interview removed from the version that the jury saw, the appellant was recorded as saying this after the words "I was worried" and before the words "I didn't know whether he was gonna come at me with a weapon" in the passage to which we have just referred:

> "I was worried because also I know that he's quite a hardened criminal, I know that he's done, so well, so he's told me he's done a lot of time in, in the US and he's done time in the UK as well, so I was really scared for my life [and then] I didn't know whether he was gonna come at me with a weapon."

19. In his defence statement, at paragraph 5, the appellant accepted that he had been present at the scene assaulting Mr Collins, but would say that he had acted in self-defence, and, specifically at paragraph 7, that he stood by his account put forward in his interview with the police.

20. Representing the appellant this morning, Mr Simon Hustler, who did not appear below, has developed the argument succinctly stated in the appellant's notice. He submits, essentially, that Mr Collins' previous convictions ought to have been admitted into evidence, under section 100(1)(a) and (b) of the Criminal Justice Act 2003, that the appellant had been aware, as was evidently so from what he said in interview, of Mr Collins' previous convictions, albeit that he did not know the detail of them, and that the failure to admit evidence of Mr Collins' previous convictions into evidence before the jury vitiated the fairness of the trial and rendered the appellant's conviction unsafe.

21. It is necessary therefore to consider more closely the judge's ruling on the defence application for the admission of Mr Collins' bad character given after argument.

22. A skeleton argument appears to have been before the judge – though headed with reference to another indictment and another case – in which the two convictions of Mr Collins in 2007 were relied upon – that is to say his conviction of an offence of assault occasioning actual bodily harm and his conviction of an offence of wounding. The submission was made to the

judge that the requirements of section 100(1)(a) and (b) were met, that is to say that this was both "important explanatory evidence", because it explained why the appellant had reacted in the way he did, given that he knew of Mr Collins' previous convictions and his propensity to be violent, and without it a properly directed jury might not understand why the appellant had thought it was necessary to arm himself with a stick. And also that the evidence had "substantive probative value in relation to a matter ... in issue in the proceedings, and ... [was] of substantial importance in the context of the case as a whole", given that the primary issue in the case was self-defence and the previous convictions of Mr Collins were, it was said, the basis for the "reaction" of the appellant when he had gone back to Mr Bailey's house. Those submissions were advanced and amplified in oral submissions to the judge, it being submitted that the appellant maintained that he had reacted as he did because he knew that Mr Collins was a violent man. The convictions did have substantial probative value, it was submitted. They served to show that Mr Collins was "a violent man doing quite horrendous violence to somebody" and that the "average reasonable person would react differently with that knowledge".

23. The application was opposed by the prosecution. It was conceded that the appellant had raised the matter of Mr Collins' previous offending in his interview with the police. But it was submitted to the judge that the convictions were neither important explanatory evidence nor of substantial probative value in the case as a whole. It was also submitted that if it were otherwise, one would have expected them to have been referred to as "motivation" in the defence statement, and they had not been. It was submitted too that the convictions did not make it more likely that in the circumstances the appellant would have reacted as he did. And further it was submitted that they were not something without which the jury would find it impossible or difficult to understand the other evidence in the case.

24. Ruling on the application, the judge simply said that he agreed with the submissions made on behalf of the prosecution, and he was "not going to allow it for those reasons".

25. Mr Hustler submits that the judge's decision was wrong. On any view, he submits, and notwithstanding the age of the convictions and even though the full gravity of the offending involved was not known to the parties or to the judge at the time of the judge's ruling, the facts as known did reveal a disposition on the part of Mr Collins to using violence.
Mr Hustler also submits that the judge was wrong to go on, in his ruling on the evidence of the appellant's bad character, to undertake a balancing act, apparently weighing the appellant's convictions against the Mr Collins' in their respective relevance and probative value. He submits that the judge failed to consider whether the fact that the knowledge of Mr Collins' violent offending was operating on the appellant's mind at the time of the alleged offence was a matter that fell outside the ambit of the statutory provisions relating to bad character and was a matter on which the defence could rely in any event as relevant evidence under section 98 of the 2003 Act. That last point has not been developed at any length in Mr Hustler's oral argument this morning. Mr Hustler has amplified and to some degree, it seems to us, developed that argument in his oral submissions, but the essence of it and the basis upon which the single judge granted leave is as we have explained.

26. Appearing for the prosecution today, though he did not appear at trial, Mr Alex Chalk, in amplification of a recently amended respondent's notice, has made, essentially, these submissions with clarity, economy and helpfully to the court. He submits that the judge's decision not to admit the previous convictions of Mr Collins represented a proper exercise of the judge's discretion given the particular features of the evidence in the case. Those features upon which Mr Collins particularly rely are these. First, it is said, the appellant's case – that is to say that he believed Mr Collins to be a violent and aggressive man – was already squarely before the jury through the account given in interview, which was presented to the jury, including reference to Mr Collins having punched the appellant without warning straight in the eye, having punched him for no reason and having spat at him in the face. So, says Mr Chalk, the allegation of significant violence at the time of the incident was already in evidence before the jury. That, he says, was the best possible evidence of the type of violence that might have been feared and might have been operating on the mind of the appellant when he used the weapon he did on Mr Collins.

27. Secondly – and this is a point that Mr Chalk emphasizes – he says that there is no evidence that the details of the complainant's conviction in 2007 were in fact known to the appellant at the time of the present assault. He refers to the passage to which we have already adverted in the appellant's interview with the police. In the passage to which we have referred, it is far from clear, he submits, that the appellant even believed these apparent boasts of having served prison sentences, given that there were other aspects of what Mr Collins had told him, about which he was apparently doubtful, including what he had said about his ill health.

28. Thirdly, Mr Chalk submits, even if the appellant did believe Mr Collins' boast of having served a previous sentence of imprisonment, at no stage had the appellant said that he understood that punishment to have been for an offence of violence.

29. Fourthly, the opportunity to make clear in the defence statement that it was the specific details of the previous conviction that were actively playing on the appellant's mind, had not been taken. So, says Mr Chalk, there was no or no sufficient evidence to suggest that the fact or detail of Mr Collins' previous convictions, including his conviction for wounding, was actively playing on the mind of the appellant when he went back to the scene seeking, it is said, a confrontation.

30. Fifthly, Mr Chalk submits, the appellant's defence of self-defence was always an ambitious defence, given his admission that he had returned to the house after the first phase of the incident, making it clear in his interview that he had wanted to remonstrate with Mr Collins, and had admitted having felt humiliated by what had taken place earlier that night.

31. Sixthly, Mr Chalk submits, there was no dispute at trial that the appellant had indeed struck Mr Collins on his head when on the ground. That had been the evidence also of Mr Bailey and the appellant had not denied it.

32. Seventhly, Mr Chalk submits, the judge also refused to allow the appellant's own previous convictions for offences involving provocation or inducing fear when stopped driving in Italy, to go before the jury. Nevertheless, the appellant in his evidence had managed to tell the jury that he did not "do fights" and was "not a violent person". The judge, in the circumstances, had been justified in referring to the objective of maintaining "equality of arms".

33. So, submits Mr Chalk, when one gathers those considerations and places them within the legal framework, the judge was entitled to find that Mr Collins' convictions in 2007 did not find themselves admissible through either of the gateways pleaded. He develops that submission by reference specifically to section 100(1)(a) and (b) and by reference too to the relevant commentary in Archbold and case law referred to there.

34. As to the question of substantial probative value for the purposes of section 10(1)(b), Mr Chalk submits that there were three factors here germane to the court's consideration of the application. First, in section 100(3)(a), the nature and number of incidents to which the evidence relates – this having been a single incident. Secondly, under section 100(3)(b), when those events were alleged to have taken place, the conviction here being 10 years old by the date of trial and committed when Mr Collins, Mr Chalk submits, was evidently a fitter and stronger man. Thirdly, for the purposes of section 100(3)(c), probative value by reason of similarity, no proper basis exists, submits Mr Chalk, for suggesting that Mr Collins' belligerence at the time of the present incident bore any sensible comparison to the facts of the offending for which he was convicted in 2007. Thus, submits Mr Chalk, this court can be satisfied that the judge's decision to refuse to admit the evidence of Mr Collins' previous convictions was sound and the conviction not unsafe.

35. Eloquently though those submissions were advanced both in writing and orally, however, we cannot accept them. We see force in the basic simplicity of Mr Hustler's argument for these reasons.

36. There was clearly a substantial conflict between prosecution and defence as to how the violence between the two men had begun and what course it had taken. Did Mr Collins rush out of Mr Bailey's house when the appellant came back and attack him, causing the appellant to resort to defending himself with a weapon that now came to hand – whatever that weapon may have been? Or did the appellant arrive at the front door on his return armed with a weapon he had brought with him – the prosecution said a baseball bat – intending to attack Mr Collins with it in any event? And whichever it was, how did the violence develop from the encounter between the two men after the appellant returned? These issues were clearly central and critical in the appellant's trial and they went to the heart of the defence he was advancing – namely the defence of self-defence. Their relevance to that defence had been foreshadowed in the defence statement, in which it had been made clear that the appellant intended to adhere to what he had said in his interview with the police, and the account he had given in his interview with the police included a clear reference to his knowledge of Mr Collins' predisposition to violence and his having

been imprisoned, it seems to us clearly in the context in which the relevant observations were made, for violent offending. That much is plain, it seems to us, from the immediate context in which the observation was made, in which reference was made first to the asserted violence of Mr Collins on the night in question and secondly to a previous assault two weeks beforehand.

37. It is in that context that we must consider whether the judge was right to rule as he did on the appellant's application to adduce the evidence of Mr Collins' bad character.

38. In that context, in our view, the judge's decision not to admit the evidence was in the particular circumstances of this case incorrect. His ruling was not reasoned beyond his adoption of prosecution counsel's assertion that the convictions did not engage the provisions of either section 100(1)(a) or (b), and also, apparently, her submission that they were "not something without which the jury would find it impossible or difficult to understand the other evidence in the case". That, in our view, was not a correct basis for ruling against the admission of Mr Collins' convictions. In our opinion, the convictions certainly were of substantial probative value in respect of issues other than credibility, namely which of the two men had been the aggressor, and if Mr Collins was or might have been the aggressor, whether the violence used by the appellant went beyond that which was reasonable in the light of his knowledge of Mr Collins' previous violent offending. Nor, in our view, was the error corrected by the judge's ruling on the admissibility of the appellant's previous convictions, explicitly on the basis that by not admitting them he was maintaining, as he put it, "equality of arms", even if, which may be doubtful, those convictions of the appellant were, in the circumstances, properly admissible in themselves. In our view, therefore, the judge's ruling on a simple analysis was incorrect and the detriment to the fairness of the appellant's trial was not remedied by his subsequent decision on the admission of the appellant's own bad character.

39. That analysis is not disturbed, in our view, by the submissions made on behalf of the prosecution as to the degree to which the appellant knew the circumstances of Mr Collins' previous offences. It was enough, in our view, to found the application here that he had clearly demonstrated in his interview with the police that he was aware of Mr Collins' violent previous offending. The precise detail of that previous offending and the degree to which he was aware of it at the time does not, it seems to us, bear significantly on the analysis we have set out.

40. This being so, can the appellant's conviction nevertheless be upheld as not unsafe? That is to say, despite the effect of the judge's ruling that a matter of substantive probative value in respect of substantial issues in the case had been withheld from the jury. That question is, as always, a matter to be considered in the light of the particular circumstances of the case in hand, and especially in the light of the state of the evidence when the case was left to the jury.

41. There are consideration which might be said to support the conclusion that the appellant's conviction is not unsafe, and indeed to some extent Mr Chalk does rely upon them. First,

the fact that in his evidence the appellant had told the jury that Mr Collins can be "intimidating" and that he was "a violent person" and that he had "often told him about his fights" and that he "feared for his life as a consequence". Second, that despite those assertions by the appellant in his evidence, the judge in striving to maintain "equality of arms" had refused to admit the evidence of the appellant's previous convictions. Thirdly, that the basic facts of the incident is not in dispute, including the fact that the appellant had, by his own admission, left the house and later chose to return to speak to Mr Collins to remonstrate with him about what he had been saying and doing to him earlier that night.

42. We are not persuaded, however, that these considerations, whether individually or together, make it possible for us to permit the appellant's conviction to stand. In the first place, we note that the judge did not remind the jury of the appellant's evidence that Mr Collins could be intimidating and violent. Secondly, and in any event, the judge's decision to refuse to admit the appellant's bad character is, we think, of limited, if any, significance because, in our view, the non-admission of that evidence cannot properly be said to have overcome the harm done to the fairness of the trial by the non-admission of the evidence of Mr Collins' bad character, not least given the evident disparity and the relative seriousness of their respective convictions for violence. And thirdly, in our view, the circumstances of the incident themselves, in so far as they were admitted by the defence, do not override the judge's error, given that the essential question for the jury was not whether the appellant had used violence – which he accepted he had – but whether, when he did so, he may have been acting in reasonable self-defence. It seems to us that the circumstances of the incident, even in the account of it given by the prosecution witnesses, might have been regarded by a properly directed jury as not necessarily inconsistent with that defence.

43. It follows that we cannot avoid the conclusion that the appellant's conviction is indeed unsafe.

44. For those reasons, we allow the appeal and quash the appellant's conviction.

45. Mr Chalk?

46. MR CHALK: My Lord, thank you. We would invite the court to exercise its discretion to order a retrial.

47. LORD JUSTICE LINDBLOM: Is that opposed, Mr Hustler?

48. MR HUSTLER: No, it is not.

49. LORD JUSTICE LINDBLOM: Very well. In the first place, the appeal then is allowed.

Secondly, the conviction is quashed. Thirdly, in the light of there being no opposition to the prosecution's application for a retrial, a retrial will be ordered. The count on which the conviction is quashed we must specify and it seems to us, subject to anything counsel may say, that the convictions on both counts should be quashed.

50. MR CHALK: My Lord, yes.

51. LORD JUSTICE LINDBLOM: Notwithstanding the judge's approach to the two offences when he came to sentencing. Is that correct?
52. MR HUSTLER: I think so.

53. LORD JUSTICE LINDBLOM: Then so be it. The appellant is to be retried on both offences, that is to say both the offence in count 1 and the offence in count 2. A fresh indictment is duly to be served and the appellant is to be re-arraigned on that fresh indictment within 2 months.

54. Does the Crown, or for that matter the defence, apply for any supplementary orders particular to this case?

55. MR CHALK: My Lord, no.

56. MR HUSTLER: No, my Lord. There is no bail application either in these particular circumstances.

57. LORD JUSTICE LINDBLOM: Are there any other matters with which we should deal?

58. Mr Chalk?

59. MR CHALK: No, thank you.

60. LORD JUSTICE LINDBLOM: Mr Hustler?

61. MR HUSTLER: No.

62. LORD JUSTICE LINDBLOM: It seems to us, however, that it would be appropriate to make an order under section 4(2) of the Contempt of Court Act 1981 restricting reporting

of the proceedings until after the conclusion of the retrial unless there are particular reasons not to do that here.

63. MR CHALK: No, I do not resist that order, my Lord, thank you.

64. LORD JUSTICE LINDBLOM: Is it positively applied for?

65. MR CHALK: It's not positively applied for, no, but I don't resist it. I don't see there is a particular danger in this case.

66. MRS JUSTICE MCGOWAN: It must be the safer course because if the defence pursue the same application and fail, it ought not to be a risk that the jury, unlikely though it is, could have read the report of these proceedings.

67. MR CHALK: That would be my application.

68. LORD JUSTICE LINDBLOM: Mr Growcoot has raised his hand. Can you hear us, Mr Growcoot?

69. THE APPELLANT: I can hear you. I just wanted to make one inquiry.

70. LORD JUSTICE LINDBLOM: Is that an inquiry you want to make of the court or of counsel?

71. THE APPELLANT: Counsel.

72. THE REGISTRAR: You will have the opportunity after court has finished to have a post-conference with your counsel.

73. THE APPELLANT: Very well.

74. LORD JUSTICE LINDBLOM: Mr Hustler, you are content, are you, to carry on at this stage?

75. MR HUSTLER: Yes, my Lord.

76. LORD JUSTICE LINDBLOM: What about the need for an order under section 4(2) of the Contempt of Court Act?

77. MR HUSTLER: It seems to be prudent, my Lord.

78. LORD JUSTICE LINDBLOM: The defence is saying it is prudent.

79. The Crown's position?

80. MR CHALK: The Crown is not resisting. On reflection, in light of what my Lady said, I would agree, respectfully, that does seem more prudent.

81. LORD JUSTICE LINDBLOM: So, it is prudent and thus, effectively, necessary for such an order to be made to avoid the risk of reporting of in particular the ruling on the application?

82. MR CHALK: Yes. Thank you.

83. LORD JUSTICE LINDBLOM: Yes.

84. What about legal aid?

85. MR HUSTLER: I think in the circumstances legal aid is applied for in the normal course, my Lord.

86. LORD JUSTICE LINDBLOM: Yes. So we do not need to deal with that?

87. MR HUSTLER: No, my Lord, it is an application made to Birmingham.

88. LORD JUSTICE LINDBLOM: As far as I am concerned, we have dealt with everything that we should. Is there anything else at this stage?

89. MR HUSTLER: No.

90. LORD JUSTICE LINDBLOM: Thank you both very much.

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165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400
Email: Rcj@epiqglobal.co.uk