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

NCN: **[2019] EWHC 965 (Admin)**
Case No: CO/3851/2018

Courtroom No. 7

2 Redcliffe Street
Bristol
BS1 6GB

Friday, 22nd March 2019

Before:

THE HONOURABLE MR JUSTICE ANDREW BAKER

B E T W E E N:

THE QUEEN ON THE APPLICATION OF MR PEGRAM

and

BRISTOL CROWN COURT & ORS

MISS JONES appeared on behalf of the Claimant
NO APPEARANCE by or on behalf of the Defendants

JUDGMENT
(Approved)

MR JUSTICE ANDREW BAKER:

1. This judicial review is brought with the permission of Garnham J, granted on the papers on 20 November 2018. It arises out of the unsuccessful appeal by the claimant, John Pegram, at Bristol Crown Court, against a conviction in the Bristol Magistrates' Court, of an offence contrary to Section 89 (1) of the Police Act 1996, that is to say an assault of a Police Constable in the execution of his duty. The Magistrates' Court conviction was on 22 February 2018 and the unsuccessful appeal to the Crown Court took place on 25 May 2018.

2. By an application dated 15 June 2018, the claimant requested that Bristol Crown Court state a case for the purposes of an appeal to this court, by way of case stated, on one or more questions of law that he asserted arose out of his conviction and unsuccessful appeal.

3. The underlying, original circumstances were that the claimant was part of a counter-protest in Bristol City Centre, on 10 September 2017, to a demonstration by far-right protestors. In the course of what was, no doubt, a noisy and to some extent chaotic scene, a PC Millet took hold of the claimant's right arm, the claimant at that point having his back to PC Millet. Within no more than a few seconds, the officer had been struck to the face by the flailing arm of the claimant. Therefore, ultimately the issue before the magistrates' and then in turn before the Crown Court, was whether what the claimant did, such that his arm or hand flailed into contact with the officer's face in that way, constituted an assault, and if so, an assault occurring when PC Millet was acting in the course of executing his duty.

4. The case for the Crown, and PC Millet's evidence, as to his purpose in taking hold of the claimant's arm was that he was doing so to get his attention so as to administer a Public Order Act warning concerning his behaviour.

5. The request to state a case for an appeal on one or more questions of law received in the first place an unacceptably brief, blunt, and wholly unreasoned response. The appeal had been presided over by Mr Recorder Atkinson QC, sitting with magistrates in the normal way. As reported to the claimant or those acting on his behalf, the learned Recorder decided as follows in response to the request to state a case: "*I have been able to review this matter; my decision is to refuse to state a case*".

6. In *R (Forest Heath District Council) v North West Suffolk (Mildenhall) Magistrates' Court* [1997] EWCA Civ 1575, Lord Bingham, LCJ, as he was then, referred to the entitlement of a lower court to decline to state a case for the purposes of appeal by way of case stated if the proposed appeal was, and therefore the request to state a case was, 'frivolous'. Lord Bingham continued:

> *"I think it very unfortunate that the expression, "frivolous" ever entered the lexicon of procedural jargon. To the man or woman in the street "frivolous" is suggestive of light-heartedness or a propensity to humour and these are not qualities associated with most appellants or prospective appellants. What the expression means in this context is, in my view, that the court considers the application to be futile, misconceived, hopeless or academic. That is not a conclusion to which justices to whom an application to state a case is made will often or likely come. It is not a conclusion to which they can properly come simply because they consider their decision to be right or immune from challenge … But there are cases in which justices can properly form an opinion that an application is frivolous. Where they*

> *do, it will be helpful to indicate, however briefly, why they form that opinion. A blunt and unexplained refusal, as in this case, may well leave an applicant entirely uncertain as to why the justices regard an application futile, misconceived, hopeless or academic. Such uncertainty is liable to lead to unnecessary litigation and expenditure on costs.*"

7. Without doubt, in my judgment, if matters had rested upon the learned Recorder's blunt and unreasoned statement that he had decided to refuse to state a case, the proper conclusion in this court would be that the request to state a case had not been adequately considered in the court below. Matters do not rest there, however, because in the context of what is ultimately now this judicial review, the learned Recorder did provide, in 13 paragraphs over just more than 2 pages, what he stated to be his reasons for not stating a case. I give that description to what those paragraphs are said by the Recorder to represent because the document opens as follows, "*I have previously declined to state a case in this matter and have now been asked to give my reasons for so doing.*"

8. However, as Miss Jones for the claimant before me rightly submits, what in fact follows is in the nature of a review of the basis upon which the conviction was upheld and the appeal dismissed. It gives no consideration whatever to any of the questions of law proposed by or on behalf of the claimant as arising out of his conviction and the failure of his appeal, nor does it identify that, in respect of those questions, the learned Recorder should have been asking himself whether it was frivolous in the sense defined and explained by Lord Bingham, to suggest that arguable points of law, encapsulated by one or more of those questions, arose.

9. In those circumstances, I am satisfied that although the refusal to state a case has gone beyond the entirely unreasoned or bare initial refusal, it remains a refusal that has not been properly considered in accordance with the applicable legal test. In those circumstances, on any view, in my judgment, the refusal to state a request must be, and it is, quashed. The question then is how much further this court should go by way of relief upon this judicial review.

10. For those purposes it is convenient to review the questions of law said to arise such that a case ought to have been stated. They were in the following terms in the application put to the Crown Court:

> "*1) Was the Bench correct in finding that PC Millet was acting in the execution of his duty in circumstances where PC Millet accepted in his evidence that he grabbed hold of the defendant and continued to hold on to him in order to speak to him, at a time when PC Millet was not purporting to make arrest or exercise any other police power granting the use of force?*
> *2) If PC Millet's contact with Mr Pegram was within the norms of acceptable behaviour, was Mr Pegram entitled to use reasonable force to bring such contact to an end if he did not consent to it?*
> *3) Was the Bench correct in refusing to give any form of modified good character direction in respect of Mr Pegram?*
> *4) Was the Bench correct in finding Mr Pegram's conduct to be reckless, where the officer gave evidence that the defendant swiped his arm away, and in doing so, accidently hit the officer's face?*"

11. I am quite clear that no arguable point of law arises in this case as to whether the Bench properly found Mr Pegram's conduct to be reckless, so as to be capable of constituting an assault, if he were otherwise properly convicted in the light of the matters of law that potentially arise out of the first three questions. In those circumstances, I am not prepared, by way of further relief, to grant either a direction that a case be stated, or a direction that further consideration be given to the statement of a case for appeal, by reference to the fourth of the four questions. In relation to the first three questions, however, it seems to me the position is different.

12. In each case it seems to me, with the benefit now of the discussion of the case on this judicial review, in the light of the purported reasons for refusing to state a case, all of which of course post-dates the initial formulation of the questions of law on behalf of the claimant, that the three questions would benefit from tightening up and clarification in the drafting. Subject to that, however, and in the light of the extremely helpful submissions of Miss Jones today, I am persuaded, on balance, that it would not be possible rationally to conclude that the raising of those three matters of law was frivolous. In those circumstances, the further relief I shall grant will be in the form of a mandatory order directing that a case be stated for the purposes of an appeal on those three questions of law, subject to the process of tightening or clarification in the drafting that with the benefit of hindsight as I have described the court is now in a position to undertake.

13. Subject to reflecting, as it is in my experience always helpful to do, after we have reduced what I am about to say to paper, as it seems to me, the questions of law ought better to be defined as follows:

    1) whether upon the facts found in the Crown Court, PC Millet was acting in the execution of his duty when taking hold of the defendant;
    2) whether upon the evidence before the Crown Court a *prima facie* case of self-defence was raised, and if so, whether the dismissal of the claimant's appeal to the Crown Court was sound in law; and
    3) whether the approach adopted in the Crown Court on page 80 (of 87), at E-F, in the transcript of the appeal proceedings, constituted or involved a misdirection of law as to character.

End of Judgment

Transcript from a recording by Ubiqus
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

This transcript has been approved by the judge.