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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 3686 (Admin)

No. CO/752/2020

Royal Courts of Justice

Wednesday, 4 November 2020

Before:

LADY JUSTICE CARR DBE
MR JUSTICE PICKEN

B E T W E E N :

THE QUEEN
ON THE APPLICATION OF
THE DIRECTOR OF PUBLIC PROSECUTIONS — Claimant

- and -

LEEDS MAGISTRATES' COURT — Defendant

- and -

SCOTT IAN ROE — Interested Party

MR B. LLOYD (instructed by CPS Appeals and Review Unit) appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

THE INTERESTED PARTY did not appear and was not represented.

J U D G M E N T

LADY JUSTICE CARR:

Introduction

1 This is a claim by the Director of Public Prosecutions ("DPP") to judicially review the decision of District Judge Passfield ("the District Judge") sitting at Leeds Magistrates' Court on 5 November 2019 not to adjourn the trial of the interested party ("Scott Roe"). Permission to apply was granted by Goose J on 2 July 2020. The basis of the claim is that the court had in error wrongly been led to believe that the main prosecution witnesses had not attended court for the trial hearing. In fact, the witnesses had so attended. That is said to be a material mistake of fact which played a material role in the District Judge's decision not to adjourn.

2 The claim is not defended by the Magistrates' Court. In an email dated 14 September 2020 the accuracy of the facts underlying the claim has been confirmed, as it has been confirmed that the District Judge took the decision on the basis of a material mistake of fact as follows:

> "[The District Judge] has … confirmed the facts in the application are entirely accurate … Her decision was entirely based on a material mistake of fact which only came to light very shortly after she dismissed the case by which time she could take no further action."

3 Scott Roe has not participated.

Facts

4 Scott Roe, who is now twenty-seven years old, was due to stand trial on 5 November 2019 on an allegation of assault occasioning actual bodily harm on 21 April 2019, contrary to s.47 of the Offences Against the Person Act 1861. The complainant, Craig Roe, was Scott Roe's brother and the incident was alleged to have taken place within the family home. The incident is alleged to have included repeated punching on the part of Scott Roe and significant bruising being caused to his brother. Gary Roe, their father, was also a witness for the prosecution and due to give oral evidence at trial. The suggested defence was a denial of some of the incident, alongside self-defence.

5 On 5 November 2019, the prosecutor arrived at court at about 9.40am. She checked with the Witness Service whether any witnesses had attended for any of the three trials on which she was briefed, including the trial of Scott Roe, all due to proceed in the same court, Court 8. At that stage there were none. At 10am she was told that a witness in one of the other trials had attended. In relation to Scott Roe's trial, she asked for time to make further enquiries which were duly made with the Witness Service. The Witness Care Unit confirmed that both Craig and Gary Roe, for whom telephone numbers had unfortunately not been recorded, had confirmed on 21 October 2019 that they would attend trial. But, so the prosecutor was told, neither man was present.

6 In fact, both had attended, arriving at around 9.45am. They were sitting on chairs in the centre of a concourse outside Court 8, to where they had been directed or as a a result of looking at the court lists. They did not notice the Witness Service desk. Scott Roe was also waiting in a chair outside court. On two or three occasions, Craig Roe says that he walked past his brother and that they made eye contact once or twice. Craig Roe states that he is "100% certain" that Scott Roe saw and recognised him. Neither Craig nor Gary Roe heard any announcements relating to Court 8, nor were they approached by anyone.

Application for adjournment

7 Ignorant of the presence of Craig and Gary Roe at court, the prosecutor applied for an adjournment on the basis that it would be in the interests of justice for there to be one, both witnesses having indicated a willingness to attend and there having been no indication of any change of stance. The District Judge refused the application. The prosecution then offered no evidence and the charge against Scott roe was dismissed.

8 When Craig and Gary Roe saw Scott Roe leave the courtroom, they approached the court usher to ask what was happening. The usher then informed those in court of their attendance. The usher told the court that he had called a number of times for "Court 8" but no one had presented himself. It was agreed by all that the District Judge had no power to reopen the case.

Analysis

9 A material mistake of fact, leading to unfairness, is available as a ground for seeking judicial review of the determination of an application to adjourn criminal proceedings in the Magistrates' Court provided that: (1) all participants have a shared interest in cooperating to achieve the correct result; (2) there was a mistake as to an existing fact, which could include a mistake as to the availability of evidence on a particular matter; (3) the facts had been established, in the sense that it was uncontentious and objectively verifiable; (4) the person relying on the mistake and/or his advisers was not responsible for the mistake; (5) the mistake played a material, although not necessarily decisive, role in the Magistrates' Court's reasoning (see *R (DPP) v Sunderland Magistrates' Court* [2018] EWHC 229 (Admin); [2018] 1 WLR 3195 ("*Sunderland*") at [11], [109] and [117]). *Sunderland* is also referred to in Criminal Practice Direction 24C.8 as in force as of October 2019.

10 All of these requirements are met on the present facts. First, under the combined effect of the Criminal Procedure Rules (1.1, 1.2 and 3) and the Criminal Practice Direction (1 General matters 1A.1 and 1A.2), the parties had a shared interest in cooperating to achieve a just result on 5 November 2019. The allegation against Scott Roe was a serious allegation of assault against a family member. The public interest, and the wider interests of justice, require that the case be tried on its merits in accordance with the overriding objective of the Criminal Procedure Rules, namely to deal with criminal cases justly. In the context of an application to adjourn, that includes a common interest in the court's determination of the application being made on a correct factual basis (see the authorities referred to in *Sunderland* at [22] to [28] and the conclusion at [109(1)] in particular).

11 Secondly, there was a mistake as to an existing fact, namely that the prosecution witnesses had not attended court. That was uncontentious and objectively verifiable. Thirdly, the DPP was not responsible for the error. Fourthly, the mistake of fact, as the District Judge has confirmed, played a material part in the reasoning behind the decision to refuse an adjournment; indeed, it was decisive.

12 Significantly, added to the above is the fact, as was the case with the defendant in *Sunderland* (see [11] and [37]), that Scott Roe appears to have been fully aware of the fact that his father and brother were at court ready to give evidence and did nothing to correct the false premise of the prosecution's application to adjourn and the picture being presented to the court. This was, as Sweeney J said in *Sunderland* at [108], a flagrant breach of his duty to the court.

Conclusion

13 I therefore have no hesitation in concluding that the interests of justice require the merits of the case against Scott Roe to be resolved at trial. In the absence of any other available remedy, I therefore quash the decision not to adjourn and remit the matter to the Magistrates' Court. The set of circumstances before the court today is hopefully a rare one and I would endorse the general remarks at the conclusion of the judgment of Sweeney J in *Sunderland* at [116]. In particular, nothing in this judgment should be taken as diluting the rigorous approach to be taken to applications to adjourn trials in the Magistrates' Court, as set out in *CPS v Picton* [2006] EWHC 1108 (Admin); [2006] 170 JP 567 and *Balogun v DPP* [2010] EWHC 799 (Admin); [2010] 1 WLR 1915.

MR JUSTICE PICKEN: I agree.

CERTIFICATE

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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.