Neutral Citation Number: [2020] EWHC 680 (Admin)

Case No: CO/1277/2019

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

Birmingham Civil Justice Centre
Priory Courts
33 Bull Street
Birmingham B4 6DS

Date: 19/03/20

**Before** :

**LORD JUSTICE HICKINBOTTOM**
**and**
**MRS JUSTICE ANDREWS**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**THE QUEEN ON THE APPLICATION OF CRAIG WARD**

**Claimant**

**- and -**

**BLACK COUNTRY MAGISTRATES' COURT**

**Defendant**

**- and -**

**THE CROWN PROSECUTION SERVICE**

**Interested Party**

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**The Claimant appeared in person**
**Neither the Defendant nor the Interested Party appeared or was represented**

Hearing date: 19 March 2020

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# Approved Judgment

**Lord Justice Hickinbottom :**

1. On 12 July 2018 before the Black Country Magistrates' Court sitting at Walsall, in his absence, the Applicant Craig Ward was convicted of assaulting Jamie Taylor by beating him on 28 November 2017 for which, on 5 February 2019, he was sentenced to a community based order. In this claim for judicial review, he seeks to have the conviction set aside, on the ground of that the procedure was unfair in that, he submits, he was convicted for an offence for which he was not charged and/or an offence the particulars of which he was not made aware. On 29 March 2019, Carr J refused a stay in relation to performance of the obligations of the sentence; and, on 25 June 2019, Pepperall J refused his application for permission to proceed with the claim on the papers. The Claimant now renews that application.

2. The relevant facts can be shortly put. On 28 November 2017, in Walsall, the Claimant was involved in an altercation with a number of other men, which resulted in him being interviewed by the police. In due course, he was arrested and, on 8 January 2018, charged in the following terms:

> "On 28/11/2017 at Walsall in the County of West Midlands assaulted Jamie Taylor
>
> Contrary to section 39 of the Criminal Justice Act 1988
>
> Common Assault"

There is no doubt that the Claimant received that charge, and he does not suggest otherwise.

3. A requisition was sent to the Claimant requiring him to attend the court in Walsall on 8 February 2018. He did not attend, and a warrant not backed for bail was issued.

4. He was arrested at his home on 13 February 2018, and produced at the magistrates' court at Walsall later that day. There, he said that he was unfit to participate in the hearing, and would thus be not entering a plea. He produced no medical evidence in support of his assertion of unfitness, although the Applicant told us that he was suffering from anxiety at that time. According to the court record, the charge was amended in his presence, to read as follows (emphasis added):

> "On 28/11/2017 at Walsall in the County of West Midlands assaulted Jamie Taylor *by beating him*
>
> Contrary to section 39 of the Criminal Justice Act 1988"

The Claimant denies that that amendment was made, and has produced several court documents, post-dating that hearing, which refer to the charge against him as "common assault". In any event, a formal not guilty plea was then entered, and the trial set down for hearing.

5. At that stage, the Claimant asked for a case stated to enable an appeal, which was refused; but I need not deal further with that aspect of the case, because the Claimant has made clear that he does not now pursue any appeal.

6. The Claimant did not attend the trial, at which he was found guilty; but that conviction was later set aside at a hearing the Claimant did attend. The trial re-listed for 12 July 2018, when the Claimant again did not attend. He was again found guilty, and later sentenced as I have described. Before us, the Claimant said that he failed to attend these hearings because of his continuing anxiety state; but he has produced no medical evidence, and does not rely upon any medical condition in respect of his ground of challenge.

7. The Claimant then issued these judicial review proceedings in which he asserts that there were a number of procedural errors in the prosecution. In its Acknowledgment of Service, the magistrates' court sets out a chronology which on its face might suggest that the Claimant was at times less than cooperative in the relevant process – although I should say that he vehemently denies that to have been the case. However, given the narrow ground of legal challenge the Claimant makes, it is again unnecessary to set those complaints in any detail.

8. As the thrust of his substantive claim, the Claimant alleges that he was convicted of an offence with which he was not charged: he was charged with "common assault", but convicted of "assault by beating". He relies on cases such as Fagan v Metropolitan Police Commissioner [1969] 1 QB 439; (1968) 52 Cr App R 700, R v Lynsey [1995] 3 All ER 654 and R (Kracher) v Leicester Magistrates' Court [2013] EWHC 4627 (Admin), which, he submits, make clear that section 39 of the 1988 Act provides for two discrete, mutually exclusive offences, namely (i) common assault by fear of immediate violence and (ii) battery; and, he says, those cases emphasise the importance of making clear the basis of the prosecution case which the defendant has to meet. He denies that the charge was amended in his presence on 13 February 2018, as the court record indicates. He claims that he was "left at a loss" as to the actual nature of the charge against him, and he was thus fatally prejudiced in his defence of such a claim because, if he had known the precise nature of the allegation against him, he would have (e.g.) researched the law in relation to it. Consequently, he submits, the conviction is unlawful as a breach of natural justice or common law procedural fairness, and also article 6 of the European Convention on Human Rights.

9. Section 39(1) of the Criminal Justice Act 1988 ("the 1988 Act") provides:

> "Common assault and battery shall be summary offences and a person guilty of either of them shall be liable to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding six months, or to both."

There has been academic debate as to whether that made common assault and battery, which were of course common law offences, statutory offences or not: but a widely held view is that they did, and hence the reference to section 39 in the charge in this case. In any event, in this claim, no point arises as to that.

10. Whilst, as the Claimant submits, it is established that, strictly, an "assault" (causing someone to apprehend immediate unlawful personal violence) can be distinguished from a "battery" (the application of unlawful force), the cases upon which he relies have to be looked at with care. For example, in Fagan, James J (with whom Lord Parker CJ agreed) said:

> "An assault is any act which intentionally – or possibly recklessly – causes another person to apprehend immediate and unlawful personal violence. Although 'assault' is an independent crime and is to be treated as such, for practical purposes today 'assault' is generally synonymous with the term 'battery' and is a term used to mean the actual intended use of unlawful force to another person without his consent. On the facts of the present case the 'assault' alleged involved a 'battery'."

11. That the word "assault" is often used effectively as an abbreviation for "assault and battery", and certainly used to include "battery" strictly so-called, has been consistently recognised by the courts, and recognised as something unobjectionable as it was in Fagan (see, e.g., Haystead v Chief Constable of Derbyshire [2000] 2 Cr App R 339). Indeed, where a charge of simply "common assault" is brought, it can usually be assumed that it is alleged that some degree of actual unlawful violence was involved. Similarly, the use of the more descriptive phrase "assault by beating" to describe the nature of a section 39 offence does not cause any difficulties, in law or in practice.

12. Of course, however, a defendant must know the case he is facing. In Kracher, in which I was a member of the constitution of the court, the claimant was charged with common assault contrary to section 39, but the basis of the prosecution case was firmly and exclusively that he had punched the complainant. It was contended that, in those circumstances, the magistrates had erred in convicting on the basis that, although they were not sure he had struck the complainant, they were sure that he had threatened him with immediate violence. In the event, the prosecution accepted that the conviction was wrong, because the magistrates had convicted on a completely different basis from the prosecution case, and it was set aside.

13. Turning to this case, for my part, if it were necessary to determine the factual issue, although it may be that the Claimant cannot recall it and at least some of the court documents later refer to "common assault", I am satisfied by the evidence from the magistrates' court (notably the court record) that the charge against the Claimant was amended, in his presence, on 13 February 2018 to state that it was an "assault by beating". The Claimant says that he was particularly anxious at that time, and it may well be that he simply fails to remember that minor amendment having been made. That amendment made the case against him clear: the basis of it was a battery strictly so-called.

14. However, even if the charge had not been amended thus and it had remained as a charge of just "common assault", as I have explained, that general description would have incorporated the more specific "battery" or "assault by beating". We have not seen the evidence; but there is nothing to suppose that, as is usual, the initial charge of assault involved an allegation, supported by the evidence, that the Claimant had used unlawful force on the complainant. The conviction of "assault by beating" would therefore have been open to the magistrates, in any event; and the Claimant did not suffer any possible prejudice or unfairness. He says that he did not know the particulars of the offence against him, but it could be safely assumed from the charge that he was being charged with actually using unlawful force. In any event, there is no evidence that the preparation of his defence would have materially altered if he had

known that the allegation against him had been confirmed as actual violence or merely the threat of imminent violence; for example, because there was some point of law or issue of fact that he would have investigated or pursued that he did not in fact investigate or pursue, or he would have attended or been represented at his trial.

15. Before us today, the Claimant has put forward his submissions in a coherent and modest way, for which I thank him. However, in my view, the ground of challenge upon which he relies is unarguable. Further, although he does not now rely upon them, his other complaints about procedural errors did not arguably make the trial unfair, or the verdict unsafe.

16. Subject to my Lady, Andrews J, I would refuse this renewed application.

**Mrs Justice Andrews :**

17. I agree.