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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
[2019] EWHC 3765 (QB)



No. QB-2019-003345

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday, 11 December 2019

Before:

LADY JUSTICE SIMLER  
MR JUSTICE WILLIAM DAVIS

B E T W E E N :

HER MAJESTY'S SOLICITOR GENERAL

Applicant

- and -

JOHN HOLMES

Respondent

\_\_\_\_\_  
MS K. HARDCASTLE (instructed by Government Legal Department) appeared on behalf of the Applicant.

MR D. JOHANSEN appeared on behalf of the Respondent..

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**J U D G M E N T**

LADY JUSTICE SIMLER:

### **Introduction**

- 1 The Solicitor General in this matter applies for permission to bring committal proceedings against the respondent, John Holmes, for interfering with the administration of justice in criminal proceedings in Northampton Crown Court on 1 October 2018. The Solicitor General seeks Mr Holmes' committal to prison for using his mobile telephone while he and other co-defendants were in the secured dock in that courtroom in order to film for approximately 15 seconds.
- 2 The application is made on the basis of principles set out in two cases - *Her Majesty's Solicitor General v Cox & Anor* [2016] EWHC 1241 (QB), and *Her Majesty's Attorney General v Stephen Yaxley-Lennon* [2019] EWHC 1791 (QB) - that principle being that where summary-only proceedings would not reflect the gravity of the conduct, the proper course is to seek an order for committal.
- 3 In this case, Her Majesty's Solicitor General appears by Ms Katherine Hardcastle of counsel and Mr Holmes is represented by Mr Derek Johansen of counsel. We are grateful to both counsel for the clarity with which their submissions were presented. Mr Holmes has indicated in an affidavit dated 29 November 2019 that he does not contest the application for permission or, indeed, the substantive application for an order of committal. He also accepts that he was properly served with the application and accompanying documents and has expressed his apology and genuine remorse.

### **The facts**

- 4 The facts are largely uncontested and can be shortly stated. At the time he recorded the footage, Mr Holmes was one of 15 defendants on trial at Northampton Crown Court in connection with a "night raid" on a travellers' site near Market Harborough. The raid was said to have been made by a large group of men including him, and to have been motivated by a desire for revenge on certain individuals who lived at the site following a failed drug deal. Mr Holmes and others arrived at the site in the night. Some of those involved were said to have been armed, including with shotguns, and there was an attack on family homes of resident travellers. During the course of the raid, an innocent 17-year old man was shot at close range with a double-barrelled shotgun to the upper body and head. He sustained serious injury to his face, head and chest and was nearly killed. He lost the sight of one eye and remains at risk of losing the sight in the other.
- 5 Because of the number of defendants to be tried, the trial was split into two parts. Ten defendants, including Mr Holmes, appeared in the first trial. The second trial involved the remaining five, though in the event, each of the defendants entered guilty pleas before the close of the trial. During the first trial, an order under s.4(2) of the Contempt of Court Act 1981 was made in order to postpone reporting of the trial until conclusion of the second trial. Mr Holmes and his co-defendants were charged with a conspiracy to commit grievous bodily harm and violent disorder. Some co-defendants were also charged with conspiracy to supply drugs and with attempted murder.
- 6 The first trial began on 3 September 2018. Mr Holmes, who had previous convictions, attended that trial on a grant of conditional bail. Shortly before the close of the prosecution

case, on 8 October 2018, Mr Holmes entered a guilty plea to a count of conspiracy to commit violent disorder, which was accepted by the Crown. He was later sentenced to a three-year term of imprisonment.

7 On 16 October 2018, the officer in the case, Detective Sergeant O'Meara, received an email with an attachment containing some video footage of the inside of the secure dock in courtroom 4 at Northampton Crown Court. He opened the attachment and viewed the video, recognising the person first shown on it to be John Holmes. It was apparent that the footage was taken by Mr Holmes using his mobile telephone. The court has seen that video footage. It starts with Mr Holmes pointing the camera at himself, the camera then pans around the dock, showing a number of defendants, who are heard talking amongst themselves. As the camera pans around, Mr Holmes can be heard saying to the other defendants in the dock, "All right, lads, you are live". A number of defendants respond by looking towards and smiling at the camera, laughter can be heard, one individual grins and gives a thumbs-up gesture directly to the camera. In the background two dock officers can be seen bringing another defendant into the dock through the secure corridor. There is an image of two defence counsel in their wigs sitting at the back of the court. It is clear from the context of that video footage that it was taken as the court was assembling, before the judge entered the courtroom or any witnesses were there.

8 The matter was investigated by DS O'Meara, who took possession of the mobile telephone and arranged for it to be interrogated. On interrogation, it became clear that the footage was recorded on 1 October 2018 and was sent by WhatsApp to a mobile telephone number saved as "Fred Boy", attributed to Mr Holmes' co-defendant, Fred Holmes, on 13 October 2018. It had been deleted before the telephone was taken from Mr Holmes on 18 October by DS O'Meara as potentially containing evidence of contempt.

9 It is not disputed on Mr Holmes' behalf, or by him, that the main entrance to Northampton Crown Court's building has signage which contains images of a mobile telephone and a camera with lines striking through them to indicate that use of these devices is not permitted. The images are accompanied by a text explaining that mobile telephones must not be used within courtrooms and that it is an offence to take a photograph or make any audio or visual recording within court. Similar signage with images and text can be seen near to the toilets on the ground floor and is visible as a person passes the security gates to the court itself. Furthermore, on the main staircase leading to the courtrooms there is a sign which states,

**"SWITCH OFF YOUR PHONE. USING YOUR PHONE IN COURT TO MAKE AUDIO OR VISUAL RECORDINGS OR TO TAKE PHOTOGRAPHS CAN RESULT IN YOUR IMMEDIATE IMPRISONMENT".**

In the space between the outer and inner doors to courtroom 4, both sets of signs are repeated next to the entrance door to the courtroom itself.

10 So far as this application is concerned, the Government Legal Department (the GLD) wrote to Mr Holmes by letter dated 19 June 2019 notifying him that proceedings for contempt of court were under consideration and inviting representations. The letter was personally served on him on 20 June 2019 at HMP The Mount, where he was then serving his sentence. The letter was read and explained to him. Solicitors instructed on his behalf (Cartwright King) wrote to the GLD by letter dated 26 July 2019 seeking an extension of time. An extension was granted and in due course a copy of the committal application was served personally on Mr Holmes at HMP Peterborough on 20 November 2019. An

acknowledgment of service, together with an affidavit sworn by Mr Holmes, dated 29 November 2019, were thereafter served.

### **The legal principles**

- 11 The relevant legal principles are not in dispute. Both audio recording and photography in court are prohibited by statute. So far as these proceedings are concerned, s.41(1)(a) of the Criminal Justice Act 1925 makes it a summary-only offence and prohibits the taking or attempting to take in any court,

"Any photograph ... of any person ... in or a party to any proceedings before the court whether civil or criminal ...".

- 12 In addition, the video recording of proceedings in court may be dealt with as a common law contempt where the gravity of the conduct requires it. Criminal contempt is based on conduct that denotes wilful defiance of or disrespect towards the court or that wilfully challenges or affronts the authority of the court, and in the cases to which we have already referred, the Divisional Court held that criminal contempt can be pursued where the conduct is so serious that it merits the more severe sanctions available in the case of contempt of court as opposed to being dealt with summarily.

### **The committal application**

- 13 We are satisfied, and indeed it is not contested, that the threshold in this case of seriousness is met to justify an application for committal for contempt of court notwithstanding the availability of the statutory provisions to which we have referred. Further, we are satisfied that the application discloses a reasonable basis for seeking committal which is in the public interests to pursue. The gravity of the contempt in making a video in court and publishing it on WhatsApp is evident from the short account of the facts we have given, which are, again, not disputed.
- 14 In our judgment, permission should be granted and in light of the following matters a finding of contempt of court should be made. The matters to which we refer are as follows. First, there is no dispute that the context in which this contempt was committed was a large criminal trial for serious offences of violence involving elements of vengeance and intimidation. Serious harm had been caused to the victim. The conduct had the potential to disrupt that trial, albeit in fact that did not occur, and indeed the conduct was not noticed at the time. The conduct was serious, not least because it was deliberate and encouraged co-defendants to participate by encouraging them to respond to the filming. The video was shared with at least one other co-defendant and had the potential to be far more widely distributed. There was a sense of bravado amongst those present and, as is accepted, there were elements both of bravado and trophyism. The footage was taken from inside the courtroom's secure dock, covering the secure entry to the dock and including images of two dock officers and defence counsel. That undoubtedly has implications for courtroom security and also for the security of individuals. We are quite sure that summary-only proceedings would not reflect the gravity of that conduct and that this was a serious contempt.

### **Penalty considerations**

- 15 We turn to consider the question of penalty in those circumstances. The maximum penalty available for contempt of court is two years' custody (see s.14 of the Contempt of Court Act 1981). The court has power to suspend any sentence of imprisonment. There are no

Sentencing Council guidelines in relation to the offence of contempt but the court has been referred to a number of cases dealing with the question of sentencing for contempt where the approach to culpability and harm are analysed. The cases show that punishment and deterrence are both important aspects of the sentencing process. In the case of *Yaxley-Lennon* Practice Note [2018] 1 WLR 5400, to which we were referred by Ms Hardcastle, the Lord Chief Justice identified a number of factors that would usually be material to the appropriate level of punishment in an individual case. At para.80 they were identified as usually including:

- "(a) the effect or potential consequences of the breach upon the trial or trials and upon those participating in them;
- (b) the scale of the breach, with particular reference to the numbers of people to whom the report was made, over what period and the medium or media through which it was made;
- (c) the gravity of the offences being tried in the trial or trials to which the reporting restrictions applied;
- (d) the contemnor's level of culpability and his or her reasons for acting in breach of the reporting restrictions;
- (e) whether or not the contempt was aggravated by subsequent defiance or lack of remorse;
- (f) the scale of sentences in similar cases, albeit each case must turn on its own facts;
- (g) the antecedents, personal circumstances and characteristics of the contemnor;
- (h) whether or not a special deterrent was needed in the particular circumstances of the case."

- 16 On behalf of Mr Holmes, Mr Johansen emphasised the following. First, Mr Holmes promptly indicated his intention not to contest this matter and did so at the earliest opportunity. Mr Holmes was on bail throughout the trial, as we have already indicated, but that was brought to a sudden end on 18 October, when his telephone was seized and he was remanded into custody. That brought home to him the seriousness of his situation and what he had done.
- 17 However, whilst on bail, it is accepted that he entered the court using the public access routes and the dock area through the entrance for those who surrender to bail. He has accepted that there was signage regarding use of mobile telephones around the court building, albeit he does not specifically recall seeing that signage, and he does not read and write, which means he pays less attention to such matters.
- 18 So far as the recording itself is concerned, there was an element of stupidity and bravado. Mr Holmes has said it was not his intention to disrupt the court proceedings or to cause offence to anyone and he has emphasised that the court was not in session when the recording was made. So far as sending the recording is concerned, that was done without any intention, he says, on his part that the video be widely distributed and certainly without malicious intent. At the end of the day, Mr Holmes says that he did not think about what he was doing or about the potential consequences of his actions. He has expressed

considerable regret at the thoughtless, foolish actions and says he was simply intending to make light of his situation and not intending anything else.

- 19 In terms of his personal circumstances, at the time he prepared his affidavit he was a serving prisoner due to be released on home detention curfew. That took effect on 5 December 2019 and he returned to his family home with his wife and five children at the travellers' site in Peterborough. The children were all of school or home schooling age and they are dependent on Mr Holmes' earnings as a self-employed tree surgeon earning something between £250 and £500 a week. The period in which he has been in custody has inevitably been difficult for them and the family and has caused inevitable hardship. Mr Johansen invited us to keep the term of imprisonment to the absolute minimum and has submitted that if the court considers it possible, given the young family that Mr Holmes has, and the financial dependence and other support he provides, the court should consider suspending this sentence.
- 20 We are in no doubt that the custody threshold has been crossed in this case and that the seriousness of the conduct we have identified warrants a custodial penalty. The contempt found proved, whilst not done in deliberate defiance or with any deliberate intention to interfere with the administration of justice, nonetheless amounted to a serious contempt. It consisted of reckless disobedience of the important prohibition on use of mobile telephones in court to record or publish. It occurred in the context of a lengthy and serious criminal trial, with a further trial due to take place later, and with reporting restrictions in place. The anonymity of dock officers was potentially compromised, as was the security of the dock. Whatever purpose Mr Holmes had, the recording was in fact transmitted to another co-defendant and inevitably, therefore, had the potential to be passed on more widely and therefore the potential to be misused. We are satisfied that this illegal recording had the potential to prejudice the administration of criminal justice.
- 21 So far as mitigation is concerned, we take account of all the information we have heard in relation to Mr Holmes' personal circumstances. We take account and give credit for the admission of guilt and also the sincere apology and remorse that has been expressed.
- 22 Having regard to the culpability and harm involved in this offending, but bearing in mind the mitigation available, but for the admission of guilt, the sentence we would have passed would have been one of three months. We reduce that to two months' imprisonment to reflect the acceptance of guilt. We regard that as the least penalty commensurate with the seriousness of the offending. We have considered whether the period of custody can and should be suspended but having considered this carefully, we have concluded that appropriate punishment can only be achieved by immediate custody in this case. We have concluded that Mr Holmes' personal mitigation is typical of many offenders and cannot justify suspension nor is there any feature of the case that would justify the exercise of this court's discretion to suspend.
- 23 Stand up, please, Mr Holmes. Mr Holmes you will be committed to prison for a period of two months. The law is that you will serve up to half of that period. Once half of that period has been served, you will be released on licence. Do you understand? (No audible response) Thank you very much.
- 24 Given the order for committal that we have made, we have concluded that it is not appropriate to make any order for costs.

**CERTIFICATE**

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

**This transcript has been approved by the Judge.**