Neutral Citation Number: [2018] EWHC 3482 (Admin)

Case No: CO/2234/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES

Cardiff Civil Justice Centre
2 Park Street
Cardiff
CF10 1ET

10.35am – 10.52am
Datew: Tuesday, 2nd October 2018

Before:
THE HONOURABLE MRS JUSTICE ANDREWS DBE

B E T W E E N:
- -

SOPHIA PARI-JONES

and

CPS
- -

- -

MS E OWEN appeared on behalf of the Appellant
The Respondent did not appear and was not represented.
- -

JUDGMENT (Approved)

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MRS JUSTICE ANDREWS:

1. This is an appeal brought by way of case stated by the Justices of the North West Wales Magistrates' Court, relating to a decision that they made on 2 March 2018, refusing an adjournment of the half-day trial which was listed to be heard before them on that day.

2. The background to the case is that the trial had been listed to be heard on 2 March following a not guilty plea. The appellant, Mrs Pari-Jones, is an elderly lady who was charged with criminal damage of a wooden fence belonging to her next-door neighbours. The matter arose from a neighbours' dispute and an incident that had taken place in Caernarfon on 19 September 2016. A requisition was only issued by North Wales Police on 20 December 2017. However, I am told by counsel for the appellant that the events of the day in question had been recorded on a mobile telephone, and so it was not just going to be a case which depended on the recollections of the relevant witnesses, there was going to be some other evidence as well.

3. On the morning of the trial, the legal advisor to the Magistrates' Court received two emails from the defence solicitor, which were written in Welsh and were translated and presented to the court. The first email was sent at 9.23am. The solicitor stated that he was acting for the defendant and that she was a lady approaching 80 years old. It was the first listing for trial, and the criminal damage related to a neighbour dispute. The magistrates were told that the defendant was very concerned regarding the weather, because it was freezing around her house and the road, and she had no electricity. She was living by herself with no close family. The solicitor further wrote that he was stuck in his home, which was in Pwllheli, and that it was freezing hard. He said he was a distance away from the main road, which had been gritted, and although he could leave his house, he was not feeling comfortable in venturing out.

4. It is well known that the weather at that time was, frankly, appalling. The blast of cold weather was dubbed by the newspapers 'The Beast from the East,' and the official advice was that nobody should venture out on the icy roads, unless their journeys were absolutely necessary. Many schools were shut across the UK. The airports were closed and there were numerous warnings from the Met Office about the hazardous conditions. That is something of which the magistrates should have been well aware, given the snow and ice that was outside.

5. The original email was followed up by a further update from the solicitor at 10.34am, stating that the main road from his home town in Pwllheli to Caernarfon had now closed and that it was snowing heavily. That meant that he was unable to travel; even if he had ventured out from the side roads to the main road, he would not have got through on the main road. The prosecutor responded to the application in neutral terms, and said it was a matter for the court whether or not to adjourn the trial. She, however, advised the magistrates that there were two witnesses in attendance who lived next door to the defendant and that they had managed to get there. She said that they were of a similar age to the defendant, and that they were concerned at the prospects of the trial not being heard.

6. The magistrates have made it clear in their case stated that they were <u>not</u> referred to any

legal provisions. In particular, it appears that their attention was not drawn to the guidance given in a number of previous cases, for example the decision of the Divisional Court in *Crown Prosecution Services v Alan Picton* [2006] EWHC 1108 (Admin) in which Jack LJ helpfully summarised the relevant principles, set out by Lord Bingham in earlier cases, which the court should apply when determining whether or not to adjourn a case. The principles are set out in paragraph 9 of his judgment and it is unnecessary for present purposes for me to repeat them. I simply draw attention to those which were particularly pertinent here.

7. Of course, a decision whether to adjourn is a matter which is within the discretion of the trial court and, therefore, an appellate court will interfere only if very clear grounds for doing so are shown. It is important for magistrates to pay great attention to the need for expedition in the prosecution of criminal proceedings and, therefore, any application for an adjournment should be rigorously scrutinised. However, where an adjournment is sought by the accused, the magistrates must consider whether if it is not granted, they will be able fully to present their defence and, if they will not be able to do so, the degree to which their ability to do so is compromised. There is also a need to consider all the consequences of the adjournment, and whether the circumstances giving rise to it were the fault of the person seeking the adjournment. If the party seeking the adjournment was not at fault, that may favour an adjournment. The court's duty is to do justice between the parties in the circumstances as they have arisen.

8. In this particular case the magistrates did not consider whether anyone was at fault, and if so, who (or the gravity of any such fault). They did not expressly consider the fact that this was a weather problem, however, they did say that the defence solicitor should have attended and that the information was "vague" as to whether he could do so; notwithstanding that by the time they gave their ruling, they had been told that the main road had been closed and that it was snowing heavily outside. They also seemed to have criticised the solicitor on the basis that no information was provided as to making any alternative arrangements for providing representation at court. It is a little difficult, with respect to the magistrates, to see how that could have been arranged in such circumstances. However, in any event, the upshot of refusing an adjournment would mean not only that the defendant herself would be unable to give her account of the events in question to the court, but she would have no legal representative present who would be able to challenge the account given by the next-door neighbours, who were the two prosecution witnesses. Again, there is no indication that the magistrates considered the impact on the defence of their refusal to adjourn.

9. It appears from their reasoning that the magistrates decided it was in the interests of justice to refuse the application to adjourn and to proceed in the absence of the defendant and her solicitor, simply because the witnesses for the prosecution had managed to get through the bad weather conditions and attend court and they were of a similar age to the defendant. However, it cannot be assumed from the fact that the neighbours were present that the appellant was exaggerating the difficulties that she faced, or that she had no legitimate excuse for her failure to attend. One does not know whether the neighbours had stayed overnight in a hotel, for example. One does not know how it was that the neighbours managed to get there, but the fact is that they were prosecution witnesses, and the outcome of failing to grant the adjournment meant that the defence simply could not be presented. Therefore, for reasons entirely beyond her control, this elderly lady was deprived of any

opportunity she might have had to explain how the damage to her neighbour's fence came about, and to challenge the evidence that was going to be given by those prosecution witnesses.

10. It may well be that if the solicitor had managed to get to court, a decision to refuse the adjournment might have been an appropriate and reasonable decision. It is not for this court, of course, to substitute its own views on the merits of the application to adjourn. Rather the court can only interfere in the exceptional case where it is either shown that no reasonable Bench, properly directing itself in accordance with the applicable principles, could have reached the decision that it reached.

11. In this particular case, the magistrates were not given the guidance that perhaps they should have been given. Their attention was not drawn to the principles summarised in the case of *Picton* and unsurprisingly they did not apply them. In particular, it is clear that they did not turn their minds at all to the consequences for the appellant of neither she herself nor her solicitor being able to be present at the trial. There was no evidence that she had failed to attend on previous occasions in the court when the trial was listed, nor was there any indication that an adjournment would cause an unprecedented delay or any real difficulty in terms of the recollection of the witnesses. Given that this trial concerned matters that occurred around 18 months previously, a month here or there probably would have made very little difference to the justice of the case. I am told by counsel that when the appellant was required to attend for sentence on 6 March, she did so. By that time, of course, the weather conditions had got better.

12. Given all the circumstances, it appears to this Court to be self-evident that if the magistrates had taken into account all the relevant considerations and if they had balanced the appellant's right to a fair trial with the lack of fault caused by the weather conditions, the fact that she had already attended court previously, and all the other relevant considerations, they could not have refused this adjournment. The question which was stated for the opinion of this Court is: "Was our decision to proceed one that no reasonable bench could have come to based on the information available to us?" The answer to that, in my judgment is plainly yes. It was a decision that no reasonable Bench could have come to, based on that information, had it applied the correct legal principles (to which this Bench was unfortunately not referred) when exercising its discretion. I therefore allow this appeal and direct that the matter be remitted to the magistrates for the trial to take place on a convenient date, which will have to be listed through the usual channels.

End of Judgment

Transcript from a recording by Ubiqus

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This transcript has been approved by the judge.