



Neutral Citation Number: [2020] EWHC 3329 (Admin)

Case No: CO/3254/2019

**IN THE HIGH COURT OF JUSTICE**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 07/12/2020

**Before:**

**LADY JUSTICE MACUR**  
**AND**  
**MR JUSTICE JULIAN KNOWLES**

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**Between :**

<b>SALMAH NASSINDE</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>CHESTER MAGISTRATES COURT</b>	<b><u>Defendant</u></b>
<b>DIRECTOR OF PUBLIC PROSECUTIONS</b>	<b><u>Interested Party</u></b>

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**Mr Richard Brigden** (instructed by **Thanvi Natas Solicitors**) for the **Claimant**  
**Mr Paul Jarvis** (instructed by **Crown Prosecution Service**) for the **Interested Party**

Hearing dates: 24 November 2020  
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**Approved Judgment**

**Lady Justice Macur:**

1. Salmah Nassinde (“the Appellant”) appeals by way of case stated against her four convictions by the Chester Magistrates Court on 22 May, 2019, of assaulting police officers in the execution of their duty, contrary to section 89(1) of the Police Act 1996.
2. The questions posed for this court are whether the Justices:
  - i) were entitled to conclude that PC Rowlands and PC Merrick were lawfully on the Applicant’s premises on the basis that they reasonably believed it was necessary to prevent her suffering serious injury;
  - ii) were right to conclude that PC Rowlands was acting in the execution of her duty at the time of the assault;
  - iii) were right to conclude that PC Merrick lawfully arrested the Applicant.
3. Questions 2 and 3 are superfluous in that the appeal is concerned with whether the two police constables, PCs’ Rowlands and Merrick, were lawfully present upon the Appellant’s premises and thereby acting in the execution of their duty at the time they were, undoubtedly on the facts found, assaulted. If they were, there is no question but that the arrest was lawful. If they were not then it is argued that, not only were the convictions in respect of the assaults upon PCs’ Rowlands and Merrick in error but also, since the resultant arrest and subsequent detention would not be justified, the Justices should not have convicted the Appellant of the two further assaults upon two other officers which then occurred, as being “in the execution of their duty” as charged.
4. The occupier’s right to determine entry is justly protected and unequivocally recognised in the numerous authorities to which we have been, and the Justices were, referred. In this case, the relevant power upon which the police officers relied was pursuant to section 17(1)(e) of the Police and Criminal Evidence Act 1984, (“PACE”), namely to:

“...enter and search any premises for the purpose—

(e) of saving life or limb or preventing serious damage to property.”
5. The skeleton arguments served in this appeal also refer to the power of arrest, pursuant to section 24 of PACE. It appears to be common ground that, if the Appellant committed an offence of assault simpliciter then, even if the police officers were technically trespassers at the time of the arrest, they would be entitled to summarily arrest her if there were reasonable grounds to believe that she had committed the offence and that it was necessary “to prevent [her]

causing physical injury to herself...or suffering physical injury.” (See Section 24(3) and (5) (c) (i) and (ii)). However, in fairness to the Appellant, the court made clear that it would construe the third question in the case (see [2] above) strictly in terms of the offences charged which required the relevant officers to be acting in the execution of their duty; that is, for PCs’ Rowlands and Merrick to be lawfully present in the Appellant’s flat at the time of the assaults.

6. Mr Richard Brigden appeared on behalf of the Appellant. Mr Paul Jarvis appeared on behalf of the Defendant/Interested Party. Neither counsel appeared in the court below. The case was stated on 9 August 2019.

7. The Justices found the following facts:

At 3.50 am on 28 May 2018, PC’s Rowlands and Merrick were directed to attend at the Appellant’s address in relation to ‘a suspected domestic incident’. A neighbour, too fearful to leave their own flat, threw down keys to admit the police officers into a communal area. On entry the police officers heard shouting emanating from the Appellant’s flat that caused them to believe that more than one person was inside. The door to the flat was unlocked. The police officers entered. The Appellant was in the hallway, shouting into a mirror and waving her arms about. Her behaviour was erratic: with interspersed calm and aggressive behaviour. The appellant was shouting at imaginary people and continually screaming the word “she”. The Appellant was “aggressive, approaching the officers and waving her arms”. PC Rowlands searched the flat and quickly discovered that no one else was present. The living room was in disarray. The Appellant then threw an object into the living room from the hallway. PC Merrick warned the Appellant as to her behaviour. She pushed him and then took hold of PC Rowland’s arms causing her hand to hit the wall. She was cautioned and arrested. Her erratic behaviour continued. She apologised but would then display anger and aggression. She made unusual comments talking about God and someone “taking her heart”, before exposing her backside to PC Merrick. She could not remember her name and, when asked if she had taken drugs, said that she had taken “cocaine and one million cannabis”. She kicked PC Merrick to his back as he bent down and spat at him. She was taken into custody before being transferred to the Countess of Chester Hospital for assessment. Two other police officers, PCs’ Wright and Ireland then took over her supervision. Although initially calm, she began shouting and using sexualised language and behaviour. Upon being handcuffed to the rear she began to lunge, spit and shout. The two officers were kicked to their legs. A spit hood was applied, became full, and when being changed she spat into the face of PC Ireland.

8. In explaining the decision of the court, the Justices said:

“We accepted the evidence of the four officers who gave cogent and credible evidence....We found we could not attach weight to the evidence of [the Appellant] concerning her recollection of the incidents; considering her condition at two locations within a three hour period as witnessed by four officers, and that a decision was made to take her to hospital ...we believed she was so distressed at the time that we could not rely on her account....We were satisfied that the police were lawfully there [at the

property] at the outset and, once they established this was not a domestic incident, that they were entitled to remain, given the real and legitimate concerns that they had for her safety from possible serious self-harm. She was acting erratically and aggressively and threw an object in the presence of the police officers. There were signs of disturbance in the flat. She told the officers she had taken cocaine and cannabis....her reference to taking drugs ...were shouted by her shortly after arrest, but certainly before the arrest, the officers were of the view that drugs were involved....Such was the defendant's behaviour that PC Rowlands stated, 'I did not deem it safe to leave her on her own.' The police were faced with a lady acting bizarrely, aggressively and irrationally, unable to communicate coherently...Although PC Merrick agreed ...that a domestic incident had become a 'welfare concern', this was a case where an experienced police officer had very legitimate concerns for a person's safety, and it would have been negligent or remiss in the extreme for the police to quit the flat and leave the [Appellant] in that state. Neighbours had already been alarmed by the screaming emanating from her flat, concerns which were borne out by what the police witnessed first-hand. PC Merrick said in evidence, 'she was shouting into a mirror - that gave cause for concern - I wasn't prepared to leave the address'. PC Rowlands said in evidence. 'It wouldn't have been appropriate to leave her in the flat on her own...I was unaware if she was having a psychotic episode having taken drugs'."

9. Mr Brigden concedes that there was good cause for the police officers to enter into the Appellant's premises but argues that the evidence was insufficient to justify the Court's finding that they continued to have "real and legitimate concerns...for her safety from possible serious self-harm" which entitled them to remain. Neither of the officers explicitly said that they were concerned that she would sustain serious injury from prospective self-harm, nor the way she would do so. She had made no specific threat and possessed no weapon or other implement with which to inflict harm. PC Merrick had referred to it being "a welfare concern". PC Rowlands said that she did not deem it "appropriate to leave [the Appellant] on her own".
10. Mr Brigden cites *Baker v Crown Prosecution Service [2009] EWHC 299 (Admin)* and *Syed v DPP [2010] 1 Cr.App.R 34* for the proposition that an 'intrusive' power of police entry and search is rightly constrained by statute and rightly interpreted by the courts to require, in respect of section 17(1)(e), reasonable grounds to believe that there is a risk of danger to life or limb which is imminent and of a nature likely to lead to seriously bodily harm. The threshold is high. General concerns for the welfare of the occupant(s) within private property, albeit genuinely held, will not be sufficient. In this respect and as an analogous situation, he draws our attention to sections 135 and 136(1A) Mental Health Act 1983, the combined effect of which is to preclude police officers from removing an individual who appears to be suffering from a mental disorder from their home address save with the authority of a warrant secured from a Justice of the Peace. The right to remain on private property ceases to exist once the police officer was, or should have been, satisfied that there was

no threat of imminent and serious bodily harm. In this case he submits the police officers should have departed immediately once the search had revealed that nobody else was present in the premises.

11. Mr Jarvis does not dissent from any of the legal principles as indicated above and derived from *Baker* and *Syed*. However, he argues that there was more than sufficient evidence upon which the Justices could conclude that PCs' Rowlands and Merrick had legitimate cause to remain upon the Appellant's premises "in the execution of their duty". He refers to the full context of the episode as the Justices found it to be. A neighbour had reported a suspected 'domestic incident'. When the police arrived at the scene the neighbour had been fearful of leaving their own flat to grant access to the police officers. There was shouting in the Appellant's flat to such an extent that it was believed that there was more than one person involved. On entering the flat the police officers observed the Appellant's behaviour to be bizarre in the extreme, and aggressive. She appeared to be in a psychotic state. After her arrest, the officers' suspicions that the Appellant was under the influence of drugs were confirmed. She was taken from the police station to the hospital for assessment in restraints, and her behaviour once again became aggressive and provocative. That is not to say that the Justices were justifying the police action by reference to events post the alleged offence and arrest, rather that it corroborated their finding that the police officers had reasonable grounds to hold a "real and legitimate concern as to the safety of the Appellant from possible self-harm."
12. I have no hesitation in re-iterating the fundamental principles, however archaically expressed in the authorities, that an individual may resist trespass onto his/her property by the police regardless of their genuine 'welfare concerns' for the occupants therein. That is, a police officer may enter on reasonable suspicion to investigate danger to physical health, but must depart in the absence of evidence that there is a risk of imminent serious bodily harm save if the occupant acquiesces to his/her continued presence, in which case the police officer remains as invitee and not "in the execution of his/her duty". The evidence of the threat of harm may be equivocal and the police officer may well find themselves on the 'horns of a dilemma', "damned if they do [act] and damned if they do not" as Collins J said in *Syed*, but there is no question that their 'good intentions' to secure best welfare outcome will provide relief from challenge, such as made by this Appellant; nor should a court allow any sympathies for a police officer's dilemma in such a situation to distract it from a robust scrutiny of the facts. Therefore, in this case the mere fact that a police officer thought it would be "neglectful" or "inappropriate" to leave the Appellant in the flat alone would not, taken in isolation, be sufficient to cross the high threshold.
13. Nevertheless, it is equally important to observe that the fact that a police officer may use such terms or adopt the phrase "welfare concern", often at the express invitation of the defence advocate as happened here it seems, is not determinative of the nature or degree of that concern. The Court should not be swayed by mantras one way or the other. The court's task is to evaluate all of the evidence, regardless of the inexact or colloquial terminology that may have been used. It goes without saying that every case will be fact specific.

14. In this case, and subject to my Lord's view, I have no hesitation in accepting the Justices' reasoning in concluding that the officers' reasonably and genuinely believed that the Appellant posed a danger of serious harm to herself. They were entitled to test the police officers' assessment of the Appellant's state of mind and physical safety by reference to the evidence of what was said and done by the Appellant post her arrest. The Appellant's admission that she had taken drugs confirmed the police officers' prior suspicions. Her extreme agitation in the hospital reflected the behaviour that PCs' Rowlands and Merrick had observed and believed would lead her to self-harm. The Justices reasoning is sound and cannot be shown to be irrational. They were appropriately directed as to the law and faithfully applied the direction to the facts they found.
15. Consequently, I would answer all the questions posed by the Justices in the affirmative.
16. It would follow that there is no need to consider whether there was a break in time, role and causation between the arrest by PC Merrick and the subsequent assaults upon PCs' Wright and Ireland; which issue would in any event need to have been remitted to the Justices if we had determined PCs' Rowlands and Merrick to have exceeded their legitimate right to remain upon the premises. The arrest and continuing detention were lawful, and PCs' Wright and Ireland were acting in the execution of their duty.
17. I would dismiss the appeal.

**Mr Justice Julian Knowles:**

18. I agree.