Neutral Citation Number: [2021] EWHC 1076 (Admin)

Case No: CO/4306/2019

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

As at Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date: 04/05/2021

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

ANDREW SALMON	**Claimant**
- and -	
LEEDS CROWN COURT	**Defendant**
-and-	
CROWN PROSECUTION SERVICE	**Interested Party**

- -
- -

The Claimant appeared in person
The Defendant did not appear and was not represented
Anthony Moore (instructed by **CPS**) for the Interested Party

Hearing dates: 22 April 2021

- -

Approved Judgment

Mr Justice Julian Knowles:

Introduction

1. This is an application for judicial review with permission granted by Stuart-Smith J of the decision of the Crown Court to hear the Claimant's appeal against conviction in his absence on 26 July 2019.

2. I held a remote hearing by Microsoft Teams on 22 April 2021. The Claimant attended by telephone. During the hearing it became clear that the Claimant had not seen four short authorities from the CPS or Mr Moore's Skeleton Argument, although these had apparently been sent to him. I adjourned twice to give the Claimant the chance to read these (including a 90-minute adjournment for him to read Mr Moore's short Skeleton Argument). I am satisfied that the Claimant had sufficient time to prepare.

Factual background

3. On 6 November 2018 Andrew Salmon, the Claimant, was convicted at Leeds Magistrates Court of an offence under s 4 of the Public Order Act 1986 (using threatening, abusive or insulting words or behaviour with intent to cause a person to believe that immediate unlawful violence would be used against her). The victims, Vicky Swannell and her partner, lived next door but one to the Claimant in Castleford. The offence was committed on 19 May 2018 when the Claimant became abusive and threatening towards Ms Swannell and her partner because they were having a barbecue in their back garden to which he objected. Ms Swannell called 999 and the police attended.

4. According to the CPS's Acknowledgement of Service, the Claimant's trial was first listed in the magistrates' court on 19 July 2018. He claimed the papers had not been served on him and so the trial was stood out until 6 November 2018. The papers were (re)served on him.

5. Following his conviction, the Claimant was fined and ordered to pay costs and the victim surcharge.

6. The Claimant then appealed against his conviction and sentence to Leeds Crown Court. The notice of appeal is dated 21 November 2018. At all times the Claimant represented himself.

7. I take the history of proceedings in the Crown Court from the CPS's Defence.

8. The appeal was first listed on 25 January 2019. The prosecution witnesses attended. The Claimant arrived late after the appeal had begun and while a prosecution witness was giving evidence. He attended with a *McKenzie* friend who he refused to name. He claimed he had never had the statements in the case. As I have said, according to the CPS, he had made a similar claim in the magistrates' court, however the papers were reserved on him (again) by being handed to him at the Crown Court. He alleged they had been fabricated, and so a police officer gave sworn evidence explaining how this was not possible. The Claimant also said he wanted a recording of the 999 call. The recording was served by a police officer on 13 February 2019 by

handing the disc to the Claimant through a window at his house: the Claimant refused to sign for it.

9. The appeal was then re-listed on 29 March 2019 before Mr Recorder Smith and justices. Again, the prosecution witnesses attended. Ms Swannell was not able to give evidence because of an unrelated matter and the matter was stood out. A successful application had been made by the prosecution pursuant to s 36 of the Youth Justice and Criminal Evidence Act 1999 for an advocate to cross-examine Ms Swannell and her partner and an advocate (Ms Gilmore) had been appointed and was present. The Claimant raised the possibility of calling a defence witness and said he wanted to make an abuse of process argument about what he said were failings in disclosure. The prosecution said it had made proper disclosure, but the Recorder directed the Crown to respond again, 'item by item'.

10. The appeal was then listed for 7 June 2019 before Mr Recorder Smith and justices. The Claimant made a complaint about the editing of the 999 call and the matter was clarified in a statement from a police officer. Paragraph 8(b) of the Defence in this action states:

> "The case was called on at 1147. The Claimant had attended with a McKenzie Friend. The Claimant refused to be identified, though he suggested that he was not Andrew Salmon but Andrew Salmon was present. He continued to inform the Court that he claimed common law jurisdiction, asked the Learned Recorder whether he was acting under his common law oath. He then called the judge fraudulent and refused to participate in proceedings, becoming disruptive and belligerent."

11. The Crown Court's mental health practitioner, Ms Tuck, was asked to liaise with the Claimant but – according to the CPS at least - he refused to engage with her. He continued to say that he 'stood under common law'; that he did not understand what the judge was saying; he repeatedly asked whether the judge was 'under common law oath'; and told the judge he would sue him.

12. It became clear the matter could not be heard that day and it was adjourned until the 26 July 2019 with an increased time estimate of one day. The Recorder asked the Claimant to put his submissions about jurisdiction and judges' oaths into writing within 14 days because they were unusual. That was not done. The Claimant told me that was because the judge, 'knew what I were on about.'

13. The appeal was listed for hearing at 11am on 26 July 2019 before HHJ Batiste and lay justices. Ms Gilmore, the prosecution and the prosecution witnesses again attended. The Claimant was not present when the case was called on at about 11am. The matter was put back until 12pm. After the case was called back on the judge said this:

> "JUDGE BATISTE: In the case of Mr Salmon he has not attended. He has contacted the court to indicate that his car has broken down. This contact was made some considerable time ago. He indicated that he was waiting for the RAC, that they would be at least two or three hours, and he was content for the case to be adjourned, which is very generous of him.

> I have seen that this case has a remarkably long history and, frankly, from all sides, it needs to be concluded. I noted that he lived in Castleford, which is not a desperately long distance away, and I have seen that he is married [Mr Salmon says he is not, in fact, married] and has a wife who he usually attends with, and so there is someone else who could remain and wait for the RAC, if that was required. I therefore had him contacted at about 11.15 to be told that the case would be starting at 12 o'clock. The reason I did that was to ensure that he had sufficient time so if he wished to be here, if his car has broken down, that by taxi or some other method he would be able to get here. I understand the call has been put out, he is not here, so I propose to proceed, unless anyone wishes to say anything else.
>
> MS CARROLL (for the prosecution): I'm grateful.
>
> MS GILMORE: My presence here was to take his instructions - …
>
> JUDGE BATISTE: Well, I know you're not representing. You're acting as independent counsel to cross-examine. Obviously the case must proceed, rather than any other alternative, and so we propose to start hearing the case.
>
> MS GILMORE: And in terms of my role, I haven't any –
>
> JUDGE BATISTE: Well, I don't know if you have instructions from the defendant or not. If you do, clearly you're entitled to put them. If not, you're entitled to test the evidence. I would prefer, if it is possible - and of course it's a professional matter for you, Miss Gilmore - for you to remain so that the evidence can be tested and so that there is greater transparency in the proceedings that have been undertaken.
>
> MS GILMORE: I'm appointed to assist the court.
>
> JUDGE BATISTE: Thank you very much. Yes."

14. The appeal then proceeded; the prosecution witnesses were cross-examined by Ms Gilmore; and the appeal was dismissed. At the beginning of his judgment dismissing the appeal the judge said this:

> "JUDGE BATISTE: This is an appeal by Andrew Salmon against his conviction by the Leeds Magistrates' Court on 8 November of 2018 for a s 4 offence - that's threatening, abusive or insulting words or behaviour, or intent to cause a person to believe that immediate unlawful violence would be used or to provoke immediate unlawful violence.
>
> It is necessary just to set out a little of the history so that if this is considered in another place there is an understanding as to what

> has happened. This case has had a long history, with a lack of some co-operation by Mr Salmon. It has been listed, I think, on at least three occasions previously, or three or four occasions previously, for appeal and has not been able to go ahead.
>
> The appeal has gone ahead today without Mr Salmon being present. The case was listed to start at 11 o'clock. After that time a phone call was received from Mr Salmon indicating that he was not present and his car had broken down and he was waiting for the RAC, which would take at least two or three hours, and he was content for the case to be adjourned. We were extremely concerned that this may be a tactic to delay matters, and we've had to consider justice for all parties, including the fact that witnesses have attended on a number of previous occasions. However, we were concerned this may be a legitimate reason and wanted to give an opportunity for him to attend. He lives in Castleford, which is, at the most, half an hour from this building by car. We therefore stood the case down until 12 o'clock to enable a phone call to be made to ensure that he was contacted and told the case would start at 12 o'clock, and so that there was an opportunity for him to attend via a taxi if that was indeed his wish. He did not attend by 12 o'clock. He has always attended with his wife previously, and it's clear that, in those circumstances, his wife, if necessary, could have remained with the car for that to be resolved.
>
> The time is now five to one. He has still not arrived at this building. We took the view, therefore, at 12 o'clock it was in the interests of justice that this matter should now be tried to completion. We were buoyed in that view by the fact it had been ordered on an earlier occasion that counsel should be instructed in order to conduct the cross-examination of prosecution witnesses as there had been an application under s.36 of the Youth Justice and Criminal Evidence Act 1999 which had been allowed for the cross-examination of the two main prosecution witnesses, and therefore it was right that the interests of Mr Salmon would be protected by cross-examination taking place. We are satisfied that Miss Gilmore, who has appeared on behalf of the court to conduct that cross-examination, has done a thorough and rigorous job in conducting the defence properly."

15. Later that day the Claimant was told by phone that the appeal had been heard and dismissed.

16. The Claimant then lodged an application for judicial review. In Section 3 of the Claim Form (Details of the decision to be judicially reviewed) he put 'Appeal Dismissed In My Absence'. He made a number of complaints about his treatment by the police, including that he had been assaulted by them after his arrest and denied access to a solicitor. These have been denied by the CPS in its Acknowledgement of Service. It says, in fact, that the Claimant refused to be interviewed at the police station and said he would refuse to be bound by any bail conditions.

17. The Claimant also complained that he had been wrongfully removed from court at his magistrates' court trial for 'questioning the court's jurisdiction'. As to this, the CPS's Acknowledgement of Service says at [12(f)]:

> "He refused to identify himself, would not sit where directed and continually asked the District Judge if he had taken the common law oath. Eventually the District Judge considered the Claimant's behaviour to be so disorderly as to make it impractical to continue proceedings with the Claimant present. He was removed by security and the case proved in his absence."

18. Regarding the Crown Court appeal, the Claimant said that his car had broken down and that the appeal had proceeded in his absence even though he claimed to have kept the court updated.

19. Permission was refused on the papers by HHJ Davis-White QC on 3 January 2020. In [3] of his order he said:

> "3. The Crown Court exercised its discretion pursuant to Criminal Procedure Rules 2015 r 3.5. On the evidence now before the court, that decision falls well within the boundaries of a proper decision to adjourn for a short period and then to proceed in the defendant's absence."

20. The judge also refused permission on the grounds of alternative remedy. He said at [4]:

> "4. Further, even if there were grounds to set aside the decision of the appeal court and (if appropriate) then hold a re-hearing, the appropriate course would be to apply to the Crown Court under its inherent jurisdiction rather than to apply for judicial review. There is therefore an alternative remedy (see *R v Knightsbridge Crown Court, ex p Johnson* [1986] Crim LR 803)."

21. Following an oral renewal hearing before Stuart-Smith J on 27 February 2020, the Claimant was given permission to challenge the decision of the Crown Court to proceed in his absence on 26 July 2019. The judge said in his order:

> "Permission is hereby granted to challenge the decision of the Crown Court at Leeds on 26 July 2019 to hear the appeal at 12 noon in the absence of the Claimant.
>
> For the avoidance of doubt, if the decision to proceed to hear the appeal at 12 noon is upheld, permission to challenge the outcome of the hearing is refused.
>
> Observations
>
> 1. On the information available to the Court today it appears arguable that to adjourn to 12 noon gave the Claimant no practical

> opportunity to attend court in time given his location and the fact his car had broken down.
>
> 2. If the hearing rightly went ahead in the Claimant's absence it is not reasonably arguable that the decision reached should be set aside on public law grounds.
>
> 3. On the information given to the Court today by the Claimant, he was advised by the Court that the correct route if he wished to challenge the decision was by JR, which (if accepted) may provide an adequate response to the 'alternative remedy' point."

22. The judge gave a number of directions, including that the Claimant should file a witness statement setting out events on 26 July 2019, and that he should file a Skeleton Argument.

23. The Claimant has filed neither. He told me he had not filed the required witness statement because, 'I ain't committed a crime … I claimed common law jurisdiction'. What he did do was file two documents relating to the breakdown of his car on 26 July 2019. These are in the bundle. The Claimant said the first document was a report from the RAC following a call out on 26 July 2019. It records that there was a report of coolant loss and overheating. It states that the coolant level was 'ok' and no leaks were found; that there were no signs of overheating; and that the RAC followed the vehicle for five miles without any sign of overheating. There is also a copy of what the Claimant said was a receipt from a garage for a repair relating to the cooling system on 29 July 2019.

Submissions

24. The Claimant maintained that he could not attend court on 26 July 2019 because his car had broken down. There is, however, no witness statement from him explaining what happened or what steps he took. There is a document headed, 'Grounds for Renewing Application' dated 14 January 2020 in which he said (*sic*):

> "I did not contact the court at 9am the day my car had broken down, I was at my home address at 9am. My car broke down about 10.15am on 26th July 2019,1 tried fixing the car for about 15 minutes before phoning the RAC at 10.40. 1 contacted the court at 10.56am on the day my car had broken down and spoke to Ian Wordsworth I informed him that the RAC would take 2/3 hours to reach me. l also left my phone number with Mr Wordsworth. I received a call from Joanne at 11.18am, she identified herself has the court clerk and stated the Judge may go ahead with my appeal in my absence. I rang the court again at 13.33pm to let them know the RAC hadn't reached me yet. I got another call from Joanne about 13.58pm, she told me the Judge had dismissed my appeal.!"

25. This document also says at [3] (*sic*):

> "I challenged the court's jurisdiction on three separate occasions on 7th June 2019 Recorder Smith refused to honor his common law oath on three separate occasions therefore, common law was proven by myself.
>
> Recorder Smith had no authority to adjourn my appeal on 7th June 2019 and nullified and conviction quashed.
>
> 'Once jurisdiction is challenged the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits and should dismiss the case'.
>
> My appeal on 26th July 2019 the court operating without authority due to lack of jurisdiction.
>
> 'Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or acted in a manner inconsistent with due process'".

26. At the hearing I explained to the Claimant that he had only been given permission to challenge the decision to hear his appeal in his absence on 26 July 2019, and suggested that that was where he ought to focus his submissions.

27. In response, he made a number of points, including in particular, that the court on 7 June 2019 had no jurisdiction to adjourn his case and that the Recorder and justices had committed 'fraud and treason' by doing so – a suggestion which, I am sure, would come as an unwelcome surprise to them. The Claimant said the order to adjourn to 26 July 2019 was null and void; and that the court had no jurisdiction because, 'I claimed common law jurisdiction'.

28. On 26 July 2019 he said he could not get a taxi or a bus. He said he had made 'no efforts' to get to the Court for 12pm because he had to look after the car. He agreed he had been told the case had been put back until 12pm. He did not think to try and get to Court. He said he had been in a rural area. He said he had been about 10 miles from the Court when his car broke down. (He later said he had only been 10 minutes away).

29. He said he wanted to attend to tell the judge he had no authority to hear the appeal, because the case should have been dismissed on 7 June 2019 when he claimed 'common law authority'. When I asked him if he had considered getting his car fixed another time, and whether the hearing of his appeal should have been given priority, he again reiterated the court had no jurisdiction. I asked him what he would have said if he had been able to get to court and he repeated the same point. He did not suggest any positive case on the merits of the allegation he would have put forward, or what evidence he would have given in response to the allegation against him.

30. He also said the case had been adjourned 'five times for the prosecution' but that they had not adjourned when he did not attend.

31. On behalf of the CPS, Mr Moore submitted that the Crown Court exercised its discretion to proceed in the absence of the Claimant in a proper and proportionate

manner, and acted within the letter and spirit of the Criminal Procedure Rules (Crim PR) and its decision fell within the bounds of the range of options available to a reasonable tribunal.

32. Secondly, he submitted the Claimant had an alternative remedy open, namely an application to set aside the decision to dismiss his appeal made in his absence.

33. He also pointed out the absence of any witness statement from the Claimant, which Stuart-Smith J ordered.

Discussion

34. The question for me is whether the Crown Court's decision was one which was reasonably open to it.

35. In my judgment the Crown Court was amply justified for the reasons it gave for first putting the appeal back to 12pm on being told of the Claimant's vehicle break down, and then hearing the appeal at that time in the absence of the Claimant. It was entitled to conclude it had given the Claimant sufficient time to attend. Although there is no witness statement from the Claimant, and so no evidence about what happened from the Claimant's standpoint, I am satisfied, as the judge said, that the Claimant was told the case would be starting at 12pm. The Claimant said to me that he was only about 10 miles or 10 minutes away from the Court when he broke down. Whichever it was, he could have attended court if he had chosen.

36. In deciding what to do, the Crown Court had to exercise its power to adjourn (or not) in accordance with the overriding objective in Crim PR r 1.1(2), an objective which includes: dealing with the prosecution and the defence fairly; recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights; respecting the interests of witnesses and victims and keeping them informed of the progress of the case; and dealing with cases efficiently and expeditiously; and dealing with the case in ways that take into account the gravity of the offence alleged, the complexity of what is in issue, the severity of the consequences for the defendant and others affected, and the needs of other cases.

37. By July 2019 the case was well over a year old and had been adjourned on a number of occasions not (or not always) at the prosecution's request, as the Claimant maintained. The prosecution's witnesses had attended on a number of occasions.

38. As I have said, I am satisfied that the Claimant had ample opportunity to attend on 26 July 2019 and that he was told the case would be going ahead at 12pm. He took a considered decision to stay with his car for the RAC to attend, rather than going to Court, even though he had been told the case had been put back and he was a relatively short distance away. He was therefore voluntarily absent, and the Crown Court was entitled on the information it had to proceed in his absence. There was no lack of fairness in what the Court did, given the choice which the Claimant made.

39. I am equally clear that even if he had attended on 26 July 2019 the outcome would have been the same because, in answer to being asked by me what he would have said if he had attended, he just reiterated the point that he would have said that the Court

on 7 June 2019 had no jurisdiction to adjourn the hearing. He did not identify anything else specific by way of defence that he would have wished to advance.

40. During his submissions the Claimant made reference to the following: contracts; 'reserving his common law rights'; 'claiming common law jurisdiction'; the fact that he did not consent to statute law, that his consent was required for the enforcement of statute law and that he could not be made to comply with it; Magna Carta; that a trust should be dismissed once 'a living man claims his status as a living man'; to him being a 'live born man'; to 'Canon Law 2057'; to Andrew Salmon being 'a fictional corporate person'; and to the Uniform Commercial Code.

41. Although he did not describe himself as such, some of the Claimant's submissions were reminiscent of the language used by members of the 'Freemen of the Land' movement. Its adherents are part of what Rooke ACJ described in *Meads v Meads* [2012] ABQB 571 as 'Organized Pseudolegal Commercial Argument' litigants. His judgment contains a very interesting analysis and debunking of the various spurious legal arguments advanced by Freemen and their ilk in court, where they generally try and argue that the laws which apply to the rest of us do not apply to them.

42. It is therefore plain that the Claimant has a number of misguided ideas about the law. So that there is no doubt about it, I should make clear that the magistrates' court had jurisdiction to try him for the public order offence he was charged with by virtue of the Magistrates' Courts Act 1980 and other legislation, and the district judge was properly appointed. The Claimant's consent was not and is not required for statute law to apply to him. Following his conviction, he then invoked his right of appeal to the Crown Court, as he was entitled to do. It follows that that Court also had jurisdiction over him with regards to his appeal. In particular, despite what he repeatedly said – and apparently believes - the Crown Court on 7 June 2019 had jurisdiction to adjourn the appeal pursuant to Crim PR r 3.5(f), which gives the criminal courts wide case management powers including the power to 'fix, postpone, bring forward, extend, cancel *or adjourn* a hearing' (emphasis added).

43. On the alternative remedies point, I do not dismiss the claim on that basis given that the Claimant may have been advised by court staff to seek judicial review.

44. Nonetheless, this claim for judicial review is dismissed.