IN THE BRIGHTON MAGISTRATES COURT CASE NO:

BETWEEN:

REGINA

V

JOSEF DOBRASZCZYK
RUTH JARMAN
SHIELA MENON
RUTH POTTS
CAROLINE LUCAS

JUDGMENT AND REASONS OF DISTRICT JUDGE TIM PATTINSON – 17TH APRIL 2014

All five Defendants face identical charges and, in view of the amendments made to the charges, it is right that I set out the precise wording of those charges upon which I must return a verdict:-

1. On 19th August 2013 at Balcombe in the County of West Sussex you took part in a public assembly and knowingly failed to comply with a condition imposed under Section 14 of the Public Order Act 1986, namely to assemble within a designated area so as not to be part of a public assembly across the entrance of the Cuadrilla site.

2. On 19th August 2013 at Balcombe in the County of East Sussex, without lawful authority or excuse, wilfully obstructed the free passage along a highway, namely B2036 London road contrary to Section 137 (1) of the Highways Act 1980.

I heard evidence and submissions in this case over six days from 24th to 28th March 2014 and on 17th April 2014. I wish to express my gratitude to all four advocates for the skill and clarity with which they have presented their arguments, both written and oral, in this difficult case. This Judgment will be relatively short which does not, in any way, indicate any lack of attention to the complexity of the legal submissions and evidence.

All five Defendants have pleaded Not Guilty to both charges. The prosecution bring the charges. They must prove all the elements of both offences beyond reasonable doubt (i.e. so that the court is sure). The onus is on the Crown because the Crown brings the charges. Put another way, in a criminal trial, the defence need prove nothing.

There is no dispute that all five Defendants were taking part in a public assembly. What is in dispute is that they "knowingly" failed to comply with a condition imposed. As a separate matter, the validity of the conditions and the validity of the Notice itself containing the conditions are both challenged by the defence.

This is not a trial about the rights and wrongs of the process of extraction of shale gas by fragmentation of rock (known as "fracking") which was the subject of the defendants' protest. I have already ruled that issues of climate change are irrelevant to the decisions I have to make in this trial. Having said this, I am quite prepared to accept, having heard evidence from all five Defendants, that they are sincere and highly motivated in their commitment to the cause of reduction of carbon emissions.

With the exception of one Defendant who has a conviction for breach of the peace arising out of an incident in 2001 and one who has a caution for breach of section 14 notice, all the Defendants are of good character. I accept in this case that a conviction which is more than 12 years old is irrelevant. Miss Jarman's caution has some relevance but I note her explanation as to how it arose. All five Defendants have produced character witness evidence of the very highest order. The various character witnesses, including a number of prominent and well-known people, have all spoken of each individual Defendant's impeccable character. There are a number of mentions of honesty, integrity, generosity, philanthropy and charity. It would be difficult to find a more impressive set of references. I give myself the usual direction that Defendants of good character are more likely than not to be truthful when giving evidence and less likely than not to commit criminal offences. However, I remind myself that, from time to time, people of impeccable character commit criminal offences.

Having made these preliminary observations, I now propose to examine the law and evidence on each of the two charges, reminding myself that I must consider the evidence against each defendant individually.

Section 14 Public Order Act (1986)

Section 14(5) Public Order Act (1986) provides that:-

"*A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this Section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control"*.

I make the following preliminary observations which are relevant to all defendants in respect of the issues of knowledge and the defence set out in this section :-

1. There was a great deal of noise at the scene, including shouting, chanting and playing of musical instruments. This made oral communication difficult.
2. A police loudhailer announcement was made by Chief Inspector Beard. The defendants' awareness of this ranged from alleged absence of any knowledge (Miss Menon, Mr. Dobraszyk) to some awareness of the fact of an announcement but an inability to ascertain what was being said (Miss Potts, Miss Lucas).
3. DCI Betts also addressed the group orally.
4. Notices were distributed, but distribution of Notices was carried out in a somewhat casual manner. No evidence was called from any of the liaison officers who purportedly served the Notices. The prosecution evidence did not amount to what could be described as strict legal "service", where a person is clearly identified and the server makes sure that the recipient acknowledges receipt.
5. I find that all the defendants were physically capable of moving to the designated area and none can put forward a defence that any failure to move "*arose from circumstances beyond his* (or her) *control"*

(section 14(5)). Therefore, I will say nothing further about this defence.

6. Finally, I have decided, taking account of all the evidence, that it would not be appropriate to draw adverse inferences in respect of the four defendants who made no comment in interview.

I turn now to consider the individual defendants.

Josef Dobraszyk

PC Port's evidence was that Mr. Dobraszyk was given a clear instruction to move to an area indicated by a row of officers. Mr Dobraszyk replied: "We shall not be moved" and was then formally arrested. His evidence was that he did not receive a Notice, did not know of the Notices and was not cautioned or arrested until he was in the police van. There was a discrepancy between the evidence of PC Port and that shown on the DVD footage.

My finding is that in the light of the DVD evidence, I am left uncertain about the precise words used by PC Port. This leads me to uncertainty about the extent of Mr. Dobraszyk's knowledge. Mr. Dobraszyk was very clear in his evidence that he had no knowledge. On these facts, I find that he did not know of the Notice and, accordingly, I find him Not Guilty of the section 14 offence.

Shelia Menon

PC Dudson's evidence was that her instruction to Miss Menon to move was unequivocal and was delivered from no more than 3 inches away from her ear, over her shoulder. Prior to this, PC Dudson said that she had seen Miss Menon being given a copy of the Notice. PC Dudson said that she was sure that she had cautioned Miss Menon, as well as providing her with precise grounds of arrest. She said that she had pointed out the designated area. Miss Menon conceded that she "was aware that the police probably wanted us to move" but maintained that she was not aware of any specific instruction to move, let alone any section 14 Notice. She heard nothing from PC Dudson.

My finding is that the DVD evidence did not corroborate PC Dudson's evidence; on the contrary, it cast doubt upon it. Any pointing out of the designated area was behind Miss Menon's back and, in my view, not visible by her. I accept Miss Menon's evidence of lack of knowledge and find her Not Guilty of the section 14 offence.

Ruth Jarman

Miss Jarman's evidence was that she did not hear anything about a section 14 notice, conditions or a designated area. In cross-examination, she conceded that she was aware that the police "didn't want us to be there", but repeated that she did not know about a designated area or, by implication, a section 14 notice. She also added that she did not "go out of my way to listen to the police". I do not find this to be a case of wilful blindness.

PC Harris' evidence of warning, caution, arrest and description of Miss Jarman were all shown to be inaccurate and unreliable in the light of cross-examination and the DVD evidence. Following Miss Jarman's clear evidence of absence of knowledge, the prosecution have failed to satisfy me that Miss Jarman knowingly failed to comply with the conditions and I find her Not Guilty of the section 14 offence.

Ruth Potts

PC Harris said that he had required Miss Potts to move, followed by a warning about arrest. He said that he had knelt down behind Miss Potts and spoken to her over her shoulder. However, in cross examination he accepted that he could not remember the precise words used by him. He agreed that on the DVD his instruction was recorded as going "to the designated area which is not here". Also, he accepted that the caution and precise words of arrest were not present on the DVD and that some of his words may have been directed to a woman other than Miss Potts. Again, there was a discrepancy between evidence given orally and what I saw and heard on the DVD.

Miss Potts acknowledged that she was aware of a police loudhailer being used but said that it was very difficult to ascertain what was being said because of the general noise level. She accepted that she had been given a piece of paper but did not understand what it was or why she had been given it. She said that she was told nothing about arrest except a warning that she might be arrested. She was not given any caution or warning that force would be used.

Did she wilfully turn a blind eye to the obvious? From considering all the evidence, my findings are that this was not a case of wilful blindness but rather a genuine lack of knowledge. Miss Potts was, of course, the first to be arrested.

If I am wrong on the question of knowledge, I find that "failure to comply" must require a concluded and final decision which must follow the granting of a reasonable period of time for reflection and comprehension (possibly, involving discussion with others) which I find, on the facts of this case, was not provided.

Therefore, I find Miss Potts Not Guilty of the section 14 offence.

Miss Caroline Lucas

In her police interview, Miss Lucas accepted that she knew of the fact of the Notice but not of its contents. In evidence, she accepted that she had briefly scanned it, found it to be incomprehensible and then put it to one side intending to consider it carefully later. She said that it was then lost when a banner was unfurled. She was distracted by the arrest of her son and the obvious pain being caused to him during his arrest. She had no idea where the designated area was.

My finding on these facts was that the prosecution have failed to satisfy me that Miss Lucas did have the requisite knowledge. I also find, on these facts, that there is insufficient proof of failure to comply.

It follows that I find Miss Lucas Not Guilty of the section 14 offence.

Accordingly, all 5 defendants are Not Guilty of the section 14 charge.

Before turning to the Highways Act charge, it is right that I give some consideration to the arguments put forward by the defence regarding the validity of the Notice. In view of my decisions above, this has little relevance but it is right that I set out my views.

All five Defendants submit that the Section 14 notice is invalid in that:-

1. The Police Officer giving the directions contained in the Notice was not authorised to do so.
2. Even if he was authorised to do so, he exercised his discretion wrongly in making a direction in this case and
3. The conditions within the Notice are so vague and unclear as to be meaningless.

Section 14 (2) defines the "senior police officer" entitled to make the directions as being:-

"a. In relation to an assembly being held, the most senior in rank of the police officers present at the scene,

b. In relation to an assembly intended to be held, the chief officer of police".

Deputy Chief Constable York is the senior police officer who authorised the Notice in this case. He was deputising for the Chief Constable who was away on holiday on 16th August 2013. Deputy Chief Constable York was clearly acting as the Chief Constable. The Notice clearly states that he was "having regard to the time and place and circumstances in which a public assembly *is being held*". If an assembly "*is being held"*, a Notice may be given by no-one other than "the most senior in rank of the police officers present at the scene." Whilst Deputy Chief Constable York had been present at the scene at some point, it is not submitted by the Crown that he was present at the scene when the Notice was authorised.

Deputy Chief Constable York's evidence was that the Notice was necessary because of an assembly "intended to be held" (i.e. in the future). His evidence was that between 1,500 and 2,000 people were expected to arrive at the Cuadrilla site as members of the Climate Camp. He was aware that there was already an assembly in place. He took the view that the issuing of a Notice would provide a tactical option in the event of a change in the nature of the assembly. Although there had been substantial numbers present in the past (for example a very large choir), he was concerned about what he described as "a different type of protester".

My finding is that the Notice made by Deputy Chief Constable York is clearly in anticipation of an important change in the nature of the assembly in the future. The conditions use the future tense ("*the assembly will be confined to"… " this will allow"…..)* However, this does not necessarily mean that he had power to authorise the Notice.

What is the position when a small or peaceful assembly is already in place but a large and possibly violent contingent are expected to attend in the future? It could be argued that the Senior Officer at the scene (rather than the Chief Constable) should authorise any Notice. Is this practicable when the nature of the disturbance is clearly anticipatory rather than actual? Counsel for the defence suggest that the question which should be asked is, "Which assembly do the police intend to impose conditions upon?" and then apply the legislation accordingly in order to ascertain the identity of the officer empowered to authorise the Notice. I agree. It seems to me that, on the evidence heard, this question was not asked. Had it been, the answer would have been, "The present assembly is to be augmented by a large number of other people joining". Therefore, the Notice should have been authorised by the senior officer present and not the Chief Constable.

I find that Deputy Chief Constable York was not authorised to make a Notice in the particular facts of this case.

Next, I have to consider whether the conditions imposed by him were reasonable in all the circumstances. Did he "reasonably believe" that the future assembly may result in serious public disorder, serious damage to property, serious disruption to the life of the community or intimidation of others?

The words "serious" in Section 14 (1) (a) are inserted for a reason. If a police officer merely believed that public disorder, damage or disruption (which were not serious) were anticipated, there would be no ground for approving a Notice.

Deputy Chief Constable York's evidence was that he believed that there could have been a serious possibility of serious disorder and significant disruption to the community. He said that this was based upon the information given to him and knowledge from previous Climate Camps. He added that some delivery drivers had refused to enter the site because of perceived intimidation and workers had been intimidated. He had real concerns about serious damage to property in view of the protection around the site being of a temporary nature and more susceptible to danger.

I find that Deputy Chief Constable York had considered the risks carefully and was mindful of the need to facilitate lawful and meaningful protest, whilst balancing this against the requirements of public safety. It is always difficult to estimate precisely the degree of damage, disorder or disruption likely to be caused by a future event. I find that he did his best to exercise his discretion fairly and reasonably. However, in the facts of this case, I have very real concerns that there were grounds for reasonable belief that a future assembly may result in the serious consequences envisaged by section 14. Again, I am left unsure.

The conditions within the Notice are set out in detail and run to 12 lines. The conditions refer to the "northern most edge of the driveway to the Cuadrilla site, Lower Stumble Farm (Wood)" and "the southernmost edge of the driveway leading to Kemp Farm Industrial Park". The designated area is shown on what appears to be a colour aerial photograph on the reverse of the notice (exhibit 6). The area is shown with a thick white outline. The prosecution accept that none of the Defendants was offered a compass and that the "map" is orientated south/north rather than the usual orientation for maps of north/south.

My finding is that the conditions are lacking in clarity and that the map is inadequate. If criminal prosecutions for failure to comply are envisaged (as they must have been in this case) it is imperative that conditions are clear. These conditions are not clear.

In short, I have such concerns about the Notice on the particular facts of this case that I find it to be invalid. This has limited relevance in view of my acquittal of all defendants on the grounds of lack of knowledge; it would be relevant only if my findings on the latter were found to be at fault..

Obstructing the highway

I turn now to the charge of obstructing the highway. Under the offence created by the Highways Act, the onus is on the prosecution to prove that the Defendants were obstructing the highway without lawful authority or excuse.

All the defendants accept that they were sitting on the ground of the driveway to the Cuadrilla site. They accept that this was a highway. I must decide whether I am sure that this was an offence contrary to section 137 Highways Act (1980). The test I must apply is whether what the defendants were doing was unreasonable, having regard to all the circumstances including position, duration and purpose and whether it caused an actual, as opposed to a potential obstruction. The onus is on the prosecution to prove that the defendants were obstructing the highway without lawful authority or excuse. The right to freedom of expression under Article 10 ECHR is not a “trump card” to authorise any protest but it is, nevertheless, a significant consideration to take into account when considering the reasonableness of any obstruction.

I did not hear evidence of actual obstruction of any vehicle or any person. The road adjoining the Cuadrilla site was partially closed (to the north) in any event. There was reference to the possibility of obstruction to emergency vehicles but no evidence of any actual obstruction. All the defendants said that they would have moved if it had been necessary to permit access to emergency vehicles. None of these

5 defendants was “locked on” to each other or to any object. I readily accept (as stated above) that all of the defendants could have moved if they had chosen to do so.

However, reminding myself of the standard of proof and the legal test for obstruction of the highway, my decision is that I do not find that there was an “obstruction” in law in this case. The obstruction was temporary in nature. No vehicle was obstructed. The road to the north was closed in any event and the defendants were in the driveway as opposed to the main carriageway.

Therefore, on these facts, I am not satisfied to the criminal standard that any of the defendants is guilty of this offence and I formally find each one Not Guilty.

Dated 17th April 2014

Signed……..

T J H PATTINSON

DISTRICT JUDGE (MAGISTRATES’ COURT)

BRIGHTON MAGISTRATES COURT