[2016 Gib LR 221]

GARCIA v. R.

SUPREME COURT (Jack, J.): September 23rd, 2016

Criminal Law—harassment—threatening, abusive or insulting words or behaviour—question of fact whether behaviour threatening, abusive or insulting—knocking on ex-partner's front door and shouting her name may be threatening, abusive or insulting if history of violence etc.

Courts—Magistrates' Court—reasons for decision—reasons required depends on particular case—in general, Magistrates' Court to state (a) charges; (b) prosecution and defence cases; (c) evidence heard and assessment of it; (d) summary of law; (e) conclusions of fact and brief reasons; and (f) decision on guilt or innocence

The appellant had been charged with causing harassment, alarm or distress.

The appellant had been in a long-term relationship with his ex-partner and they had two children. After they separated in April 2010, his ex-partner alleged that he had been violent towards her during their relationship. The appellant had been arrested but the charges were dropped when his ex-partner refused to testify against him.

In January 2011, an *ex parte* order had been made against the appellant preventing him from threatening or contacting his ex-partner and their children. The order must have been modified or discharged because the appellant had extensive rights of contact with the children, including staying contact for three weekends a month.

A dispute arose between the parties as to whether the children were to stay with the appellant for a particular weekend. The appellant and his ex-partner exchanged messages and he then went to her home to attempt to collect one of the children. He knocked on the door and shouted her name. She claimed that he had shouted and banged loudly on her door and rattled the shutters. Her mother, who had also been present at the time, stated that the appellant had called her daughter's name and given "a sort of hardish knock so we could hear."

The stipendiary magistrate found the appellant guilty of causing harassment, alarm or distress, contrary to s.89(1)(a) of the Crimes Act 2011, and fined him £200.

The appellant appealed, submitting *inter alia* that (a) merely knocking on the door and shouting could not amount to "threatening, abusive or insulting words or behaviour"; (b) the magistrate had failed to give

adequate reasons for the conviction; and (c) the magistrate had made the wrong decision on the facts.

Held, allowing the appeal:

(1) The magistrate had not erred in finding that knocking on the door and shouting someone's name was capable of amounting to threatening, abusive or insulting words or behaviour contrary to s.89(1) of the Crimes Act 2011. Whether the appellant's behaviour had in fact been threatening, abusive or insulting was a pure question of fact. Knocking on a door and shouting someone's name would not generally be threatening, abusive or insulting. In general, it would be perfectly normal and unexceptional behaviour when someone sought to visit someone else at their home. However, context was everything. A woman who had been in a violent relationship might well feel that a visit from her ex-partner was threatening, abusive and insulting, particularly against a background of a disagreement as to childcare and loud knocking and shouting (paras. 24–28).

(2) The magistrate had not given adequate reasons for his decision. It was not necessary for professional judges, such as the learned stipendiary magistrate or experienced lay justices, to direct themselves in accordance with a detailed summing up in the way that a judge would do in the Supreme Court or the English Crown Court. However, for the right of appeal to the Supreme Court to be effective, it was necessary for reasons to be sufficient for the Supreme Court to understand the basis of the decision and to be satisfied that the Magistrates' Court had directed itself correctly in law. The requirement to give reasons would be at least the same as that which applied to the English Crown Court when determining an appeal from the Magistrates' Court against conviction. The reasoning required would depend on the circumstances. As a general rule, however, the Magistrates' Court should state (a) what the charges were; (b) what the prosecution and defence cases were; (c) the evidence heard, giving the names of the witnesses, the court's assessment as to their accuracy, a summary and assessment of any written or other evidence adduced, and a summary of any admissions by the parties; (d) a summary of the law (including any relevant defences) unless the law was straightforward; (e) the conclusions of fact and brief reasons for them unless they were clear from the evidence; and (f) the decision on guilt or innocence. In more complicated cases, more comprehensive reasons might be required. In the present case, there were three areas where criticism could properly be made of the magistrate's reasons. First, there was a significant difference between the testimony of the ex-partner and that of her mother, to which the magistrate had not referred. If the magistrate had preferred the ex-partner's evidence, he should have explained why. Secondly, it was unclear how the magistrate had dealt with the historic allegations of domestic abuse. That aspect of bad character needed to be treated with care. If the appellant had regularly beaten up his partner in the course of their relationship, she would have been justified in fearing how he might behave when he visited. If she had invented the charges, however, as the

appellant alleged, she would have had no reason to fear his visit. As the magistrate had made no determination of the allegations, it was incumbent on him to give a much more detailed explanation of how he had taken the historic allegations into account. It was unclear whether he had taken them into account or, if he had, how they had affected his final decision. Thirdly, the magistrate had not given reasons for rejecting the appellant's defence under s.89(3) of the Crimes Act 2011 (*i.e.* that, even if his ex-partner had felt threatened, it had been reasonable for him to have visited) and it was unclear whether he had actually considered it (paras. 29–42).

(3) The evidence of the ex-partner's mother potentially raised doubt as to whether the appellant's behaviour had been truly threatening. The messages exchanged between the appellant and his ex-partner before he went to her house did not reveal any threats being made by him. If the messages were not threatening and the allegations of domestic abuse had not been established, there was no reason for the appellant to have anticipated that his ex-partner would feel threatened by his visit. Moreover, the evidence suggested that the day of the offence probably was a day on which the appellant should have had contact with the children and there was an arguable case that he had been justified in going to his ex-partner's house rather than simply accepting that he would not see the children that weekend. None of these points would necessarily be conclusive but they were sufficient to raise a doubt about the safety of the conviction and it would therefore be quashed (paras. 43–46).

(4) The appellant would be acquitted. A retrial would not be ordered on the grounds that (a) the offence was not a serious one, being a low-level public order offence; (b) the incident took place 17 months ago, which was a significant delay for a summary-only offence; and (c) there was a real risk that a retrial would be oppressive given that the appellant had only been fined £200 and, if a retrial were to take place, it would be the third time the matter had come to court substantively (paras. 47–50).

Cases cited:

(1) *Brutus* v. *Cozens*, [1973] A.C. 854; [1972] 3 W.L.R. 521; [1972] 2 All E.R. 1297; (1972), 56 Cr. App. R. 799, considered.

(2) *Povilatis* v. *R.*, 2015 Gib LR 274, applied.

(3) *R.* v. *Harrow Crown Ct.*, [1994] 1 W.L.R. 98; [1994] 1 All E.R. 315; (1993), 99 Cr. App. R. 114, followed.

(4) *R. (McGowan)* v. *Brent JJ.*, [2001] EWHC 814 (Admin); [2002] H.L.R. 55; [2002] Crim. L.R. 412, referred to.

Legislation construed:

Crimes Act 2011, s.89: The relevant terms of this section are set out at para. 24.

Criminal Procedure and Evidence Act 2011, s.276(1): The relevant terms of this sub-section are set out at para. 18.

s.369(1): "In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

. . .

(c) it is important explanatory evidence . . ."

M. Bossino for the appellant;
M. Zammit for the respondent.

1 **JACK, J.:** On May 25th, 2016, the stipendiary magistrate, Mr. Pitto, convicted the appellant, Mr. Robin Garcia, of an offence of causing harassment, alarm or distress contrary to s.89(1)(a) of the Crimes Act 2011. He was fined £200. The particulars of the offence were that he—

> "on 17th April 2015 in Gibraltar did use threatening abusive or insulting words or behaviour or disorderly behaviour within the hearing or sight of Jasmin Young, a person likely to be caused harassment, alarm or distress."

2 By notice of appeal dated June 14th, 2016, Mr. Garcia appealed against his conviction. Six grounds of appeal were given. Subsequently Ms. Bossino, who has represented Mr. Garcia throughout, sought to amend those grounds. The prosecution raised an issue as to whether it was possible to amend grounds of appeal. When the matter came before me for hearing, it seemed to me that the proposed amendments added nothing to the six grounds already given. In those circumstances, Ms. Bossino did not press her application to amend the grounds of appeal.

The evidence

3 Mr. Garcia and Ms. Young had been in a long-term relationship. There were two children of the relationship: Robin Leon Paul Garcia, born on May 26th, 2001 and Rikoh Logan John Garcia, born on October 30th, 2009. The parties separated in April 2010.

4 Following the separation, Ms. Young alleged that during the relationship Mr. Garcia had been violent to her. In consequence Mr. Garcia was arrested and initially was remanded in custody. However, subsequently Ms. Young refused to testify against him in court and the charges were dismissed.

5 On January 18th, 2011, on Ms. Young's application, Butler, J. granted an *ex parte* order against Mr. Garcia preventing him threatening, assaulting, communicating with or otherwise interfering with Ms. Young, Robin and Rikoh, or approaching within 50m. of her or the two children. It is clear that that order was at some stage modified and most probably discharged, because it was common ground that Mr. Garcia had at the time of the offence alleged against him extensive rights of contact with Robin and Rikoh, including staying access for three weekends a month. There

was no evidence before the Magistrates' Court that the allegations made by Ms. Young against Mr. Garcia in the family proceedings had ever been the subject of a judicial determination.

6 After separating from Mr. Garcia, Ms. Young formed a relationship with Mr. Christopher Miles, who is a well-known Gibraltarian barrister specializing in criminal cases. There is one child of this union.

7 On April 17th, 2015, there was an exchange of WhatsApp messages between Mr. Garcia and Ms. Young. At 12.02 p.m., Mr. Garcia asked at what time Rikoh was leaving school. Ms. Young replied at 2.04 p.m. and messages were exchanged back and forth until 2.48 p.m. The transcript of these latter messages reads:

> "YOUNG: Firstly este weekend me toca a mi since you decided to keep the children on the Easter break even though you know half is mine as you know well. You have meddled up the weekends. If you think about it you will realise this weekend me tocan a mi and next weekend is yours. Secondly aparte Robin is extremely upset and has had to miss a day of school because of all the bizarre lies you told him and Rikoh on Wednesday. He is also having his braced fitted which will be extremely uncomfortable for the first few days so he would rather stay with me anyway. Aparte that it is my weekend as I mentioned before, this behaviour on your part has to stop as it will not be tolerated any longer. He is very scared that he will be told him off by you because of the Lamborguini subject.
>
> GARCIA: Jas my weekend is this one and you said I have 3 weekends a month.
>
> YOUNG: I don't understand what you're saying. It's my weekend.
>
> GARCIA: You just had your weekend this is my weekend. Don't mix the boys up anymore.
>
> YOUNG: I have not agreed to anything and certainly won't after your behaviour on Wednesday. They will not go to get brainwashed y pasa un mal rato as they did. You have a problem with me you tell me. Also Rikoh is not in school as he had a tummy ache.
>
> GARCIA: You don't have to agree to my weekend. They are mine.
>
> YOUNG: I am not . . . them up. No quiere ir as he is upset with you. I suggest you apologise to him. Easter break: last week was mine you did not bring them. If Rikoh is better I don't mind him going tomorrow so that he can see his brother again.
>
> GARCIA: The only problem is that you lie lie and lie all the time. You know I'm here at school so I'm picking Rikoh and send Robin to my mother's house if he goes there after you have confused him for

sure as you just wrote to him before. Mum's house. After braces just send him over. If you had a bit of sense you would have told me about plans on my days and I would have plainly changed them. Be more helpful they're your children too.

YOUNG: As for Robin I suggest you apologise to him. It's unacceptable y esto no se aguanta mas Robin. Helpful Robin you have mistaken my kindness for foolishness for a long time now. I draw the line here. You have a problem with me you tell me not them. COS OF WEDNESDAY.

GARCIA: I don't have to talk to you about anything that's not about kids. So you know.

YOUNG: The one who lies is you constantly lies, lies, lies se acabo. You want to see the children cuando te toca eres el padre, y tienes derecho eso no te lo [h]e quitado nunca pero cuando vienen upset por la boca que tienes y las mentiras que habla aqui el tema cambia. And if you don't have to talk to me about anything other than the kids agreed me parece muy bien but you will definitely not bad mouth me or Chris to them.

GARCIA: I am looking forward to seeing all my boys together it's my weekend. You know it. Don't be jealous and change everything because they are looking forward for this moment. We have been talking about it for a long time. [Mr. Garcia then made some allegations about Mr. Miles and suggested Mr. Miles' and Ms. Young's family life was dysfunctional.]

YOUNG: Robin you are crazy and invent things up. The dysfunctional family is yours not mine. If you continue to invent lies about my life, partner and anything else of the sort and/or tell the children like have been doing I will report you to the police for defamation of character and will be reporting all this to my lawyer. Bye Robin."

8 The last message from Ms. Young may not have been received by Mr. Garcia before the incident which followed, but nothing turns on this.

9 Shortly before 3.22 p.m. Mr. Garcia drove to Ms. Young's property. What then occurred is in dispute. Mr. Garcia's case in interview was:

"Knocked on the door because it's my weekend, she had the weekend before this one, so it's my weekend . . . I knocked on the door. Rikoh tried to open the door. She goes 'Rikoh' grabbed him, shouted at him and put him inside the kitchen. That's for what I can say because I know the house's layout. She grabbed the boy and put it inside shouting to him. So I went out, got in the car and went, because I know she was gonna call the police because she didn't send the boy to school either, because I went to pick him to school

> and the teacher said the boy hasn't gone today to school. So I went to the house to pick him up. My eldest boy walks from the school to my mum's house so I don't have to pick him up. I haven't done anything wrong."

10 Mr. Garcia did not give evidence at his trial, as of course was his right, but his interview was put in evidence.

11 Ms. Young's mother, Priscilla Serfaty, had been at her daughter's house for lunch. Her account of what occurred in her witness statement (which was read as her evidence-in-chief) was this:

> "Suddenly I heard a loud engine sound from a car that was outside the residence. My daughter then said: 'It's Robin. It's Robin.' I saw she was very terrified, crying and shouting as she feared what he was going to do to her. I tried to calm her down, and whilst she went to her room with the children, I stayed by the living room and looking around the house just in case he jumped in through the back patio. I then went and looked through the curtains and saw it was Robin, my daughter's ex-partner. He started calling her name out and then went towards the front door knocking and calling her. He remained knocking and called at the door for about ten minutes until he then decided to leave. Immediately after I heard the sirens of the police and they arrived at the door."

12 She elaborated on this in supplemental questions from the Crown and said it was "a sort of hardish knock so we could hear." In cross-examination she confirmed that Mr. Garcia had only called out Ms. Young's name. Her evidence was that her daughter was alarmed and distressed by Mr. Garcia's behaviour.

13 Ms. Young gave evidence as follows:

> "Because of the messages I sort of thought that would be his reaction [coming over to her house] knowing him well, so I had already closed the shutters and then he's got loud cars so I heard the engine arriving. And then I thought if he comes in a friendly manner I'll have no problem in letting him see Rikoh to see that he is ill, pero como he came shouting and banging down my door shouting my name . . . He started banging on the door . . . But not sort of knocking, sort of more like punching the door like, shouting my name and 'abre la puerta.' Well I stayed inside, I didn't open it, I didn't do anything, and then he went, and I heard him with the shutters, I heard the shutters rattling."

14 She gave evidence that she called the police. The police records show that this was at 3.22 p.m. So far as the shutters were concerned, she did not see Mr. Garcia at the windows, she just heard him. His behaviour had caused her alarm and distress.

The bad character application

15 By an application made on August 7th, 2015, prior to the trial, the prosecution sought to adduce bad character evidence. The gateway relied on was s.369(1)(c) of the Criminal Procedure and Evidence Act 2011 (important explanatory evidence). The evidence relied on was a statement by Ms. Young, in which she said that during their relationship—

> "Robin [Garcia, the defendant] was extremely violent towards me and assaulted me on several occasions. On one particular occasion, he was charged with assaulting me, kidnapping me and was remanded in custody for several days. On this particular occasion I suffered injury to my teeth and also suffered from concussion. I was indirectly threatened by him and in the end provided the Police with a negative statement due to the fact that I was terrified of any repercussions this could bring. As a result of this a civil injunction was put in place and is still in place today to the best of my knowledge. I did not give evidence against him in Court as I was extremely scared of him and believed it was in the best interest of my children . . ."

16 On March 3rd, 2016, the learned stipendiary magistrate granted the bad character application, but on a limited basis. As he explained:

> "The defence admits that about five years ago he was remanded in custody for several days as a result of charges by the [Royal Gibraltar Police] into allegations made against him by the complainant or the victim. He says that the charges were dismissed in Court. He also says that there was an injunction put in place [but] at the time [of the offence] they are no longer in place. In my judgment [these admissions] are sufficient to provide the Court with any background information which is necessary to understand the complainant's state of mind at the material time. There's a history between the parties and that is enough. There is no need to go into issues of why the prosecution did or did not prosper or proceed, but that can be influenced by many different factors. We are at risk of going into those or going into areas and issues which are not central to the case, especially if we rely, as the Crown does entirely, on Ms. Young's account of the history . . . As it stands the admissions are sufficient to meet the purpose of the Crown's application and to assist the Court in reaching a determination. The victim's reaction is central to the proper understanding of the case and there is no need to go into the history without evidence of subsidiary issues. In my judgment it would be difficult properly to understand other evidence in the case and the value for understanding the case as a whole is substantial by introducing this evidence."

17 I shall come back to Ms. Bossino's submissions in respect of the magistrate's conclusions on this.

The nature of the appeal

18 I turn first to the nature of an appeal against a conviction in the Magistrates' Court. Section 276(1) of the Criminal Procedure and Evidence Act provides:

> "On an appeal against conviction, or against conviction and sentence, other than an appeal upon a case stated, the Supreme Court may—
>
> (a) quash the conviction and acquit the appellant;
>
> (b) affirm the conviction;
>
> (c) substitute a conviction for any other offence of which the appellant could have been lawfully convicted if he had been tried in the first instance upon an indictment for the offence with which he was charged or of which he could have been lawfully convicted by the Magistrates' Court;
>
> (d) in either of the cases mentioned in paragraph (b) and (c), affirm the sentence passed by the Magistrates' Court or substitute for it any other sentence, whether more or less severe and whether of the same nature or not, which that court would have had power to pass; or
>
> (e) order a re-trial of the appellant before the Magistrates' court."

19 Section 277 in the same Part of the same Act provides:

> "(1) Subject to subsection (2), the Supreme Court, upon the hearing of an appeal against conviction, must allow the appeal if it thinks that—
>
> (a) the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or
>
> (b) the judgment of the Magistrates' Court should be set aside on the ground of a wrong decision of any question of law; or
>
> (c) on any ground there was a material irregularity in the course of the trial,
>
> and in any other case must dismiss the appeal.
>
> (2) The Supreme Court, even if it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) Subject to this Part, the Supreme Court must, if it allows an appeal against conviction, quash the conviction and direct a judgment and order of acquittal to be entered."

20 As I explained in *Povilatis* v. *R.* (2) (2015 Gib LR 274, at paras. 9–10):

"9 The wording of s.277 is taken from s.2 of the Criminal Appeal Act 1968 (UK) as originally enacted. (The wording of the English legislation was amended by the Criminal Appeal Act 1995 (UK): see Archbold, *Criminal Pleading, Evidence & Practice*, at para. 7–43 (2014 ed.).) Section 2 dealt with appeals to the Court of Appeal from a jury trial in the Crown Court. The classic statement of the approach of the Court of Appeal on an appeal against conviction is Widgery, L.J.'s judgment in *R.* v. *Cooper* . . . ([1969] 1 Q.B. at 271). This was an identification case and he said that it was—

'. . . a case in which every issue was before the jury and in which the jury was properly instructed, and, accordingly, a case in which this court will be very reluctant indeed to intervene. It has been said over and over again throughout the years that this court must recognise the advantage which a jury has in seeing and hearing the witnesses, and if all the material was before the jury and the summing-up was impeccable, this court should not lightly interfere. Indeed, until the passing of the Criminal Appeal Act, 1966—provisions which are now to be found in section 2 of the Criminal Appeal Act, 1968—it was almost unheard of for this court to interfere in such a case.

However, now our powers are somewhat different, and we are indeed charged to allow an appeal against conviction if we think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory. That means that in cases of this kind the court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the court experiences it.'

10 It is clear, in my judgment, that a similar approach needs to be taken to an appeal against conviction by the Magistrates' Court."

21 Although there were originally six grounds of appeal, in fact these can be reduced to three heads:

(a) The knocking on the door and shouting Ms. Young's name could not as a matter of law amount to threatening, abusive or insulting behaviour;

(b) The learned magistrate failed to give adequate reasons dealing with the main thrust of Mr. Garcia's defence; and

(c) The learned stipendiary magistrate reached the wrong decision on the facts.

22 Thus in the current case, I need to consider first whether the learned stipendiary magistrate directed himself correctly; secondly, whether there was a procedural irregularity in that the magistrate did not give sufficient reasons for his decision; and thirdly, whether in all the circumstances the conviction is safe or whether there is a lurking doubt that an injustice may have been done.

Recusal

23 In her skeleton argument, Ms. Bossino sought to raise a further issue: whether the learned magistrate should have recused himself. This was not a ground of appeal in either the original grounds or the proposed amended grounds and Mr. Zammit not surprisingly objected to the point being taken. In my judgment, unless this was a stated ground of appeal, it was not open to Ms. Bossino to argue the point. In any event, it had no merit at all. It was only in the course of the trial that Mr. Pitto learnt that Ms. Young was in a relationship with Mr. Miles. Mr. Pitto explained that he was friends with Mr. Miles and that sometimes they went out for a meal. He had not picked up the relationship earlier because, as he said: "I'm not practically good with [the] jigsaw puzzle 'who's with who,' 'who was at school with . . . this and that [person].'" Ms. Bossino then unequivocally waived any objection to the learned stipendiary magistrate continuing to hear the case.

Threatening *etc*. behaviour

24 Ms. Bossino submitted that merely knocking on a door and shouting someone's name could not amount to "threatening, abusive or insulting words or behaviour." Section 89 of the Crimes Act 2011 provides:

> "(1) A person commits an offence if he—
>
> (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
>
> (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,
>
> within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed if the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the defendant to prove that—

(a) he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress;

(b) he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling; or

(c) his conduct was reasonable.

(4) A person who commits an offence under this section is liable on summary conviction to a fine at level 3 on the standard scale."

25 Ms. Bossino cited the well-known authority of *Brutus* v. *Cozens* (1). There, during the Wimbledon tennis tournament, in order to distribute anti-apartheid leaflets, Mr. Brutus had invaded a tennis court on which a South African was playing. He was charged with insulting behaviour. The House of Lords held that "insulting" was an ordinary English word and that its meaning was not a question of law. Lord Reid said ([1973] A.C. at 862):

". . . [V]igorous and it may be distasteful or unmannerly speech or behavior is permitted so long as it does not go beyond any one of three limits. It must not be threatening. It must not be abusive. It must not be insulting. I see no reason why any of these should be construed as having a specially wide or a specially narrow meaning. They are all limits easily recognisable by the ordinary man. Free speech is not impaired by ruling them out."

26 Whether (to put it neutrally) the knocking on the door and shouting Ms. Young's name out was threatening, abusive or insulting was in my judgment a pure question of fact.

27 I agree with Ms. Bossino that knocking on a door and shouting someone's name out will not generally be threatening, abusive or insulting. On the contrary, in general that will be perfectly normal and unexceptional behaviour when someone seeks to visit someone at their home. However, context is everything. A woman who had been in a violent relationship may well feel that a visit from her ex-partner is threatening, abusive and insulting, particularly against a background of a

disagreement carried out over WhatsApp and a pounding on the front door with shouting.

28 In my judgment, there is no error of law shown in the magistrate's approach to s.89(1). Whether he erred in relation to the defence given by s.89(3) is a matter to which I shall come back.

Adequacy of reasons

29 Ms. Bossino criticizes the adequacy of the reasons given for the conviction. This appeal therefore raises the issue as to whether and with what degree of detail the Magistrates' Court needs to give reasons when determining criminal trials. Historically in England, lay magistrates in the Magistrates' Court rarely give any reasons at all for their decision to convict or acquit. Stipendiary magistrates (now district judges (Magistrates' Court)) in England would rarely give more than a few words of explanation. The rationale was that an aggrieved defendant had an appeal as of right to the Crown Court where the case would be tried completely *de novo*, so he or she did not need to know the reasons. Following the enactment of the Human Rights Act 1998 (UK), Magistrates' Courts in England were required to give some reasons to ensure compliance with art. 6 of the European Convention on Human Rights: *R. (McGowan)* v. *Brent JJ*. (4). However these need only be very short indeed.

30 In Gibraltar, the nature of an appeal to the Supreme Court is quite different from an appeal to the Crown Court in England. The nature of an appeal to the Supreme Court is similar to the exercise carried out by the English Court of Appeal hearing an appeal from the Crown Court. A jury does not give a reasoned verdict but the issues of fact and law will be set out in detail in the judge's summing up so that the Court of Appeal can readily understand the basis on which the jury will have convicted.

31 Where a decision is given by a professional judge, such as the learned stipendiary magistrate, or by experienced lay justices, it is not in my judgment necessary in Gibraltar for them to direct themselves in accordance with a detailed summing up in the way a judge would do so in the Supreme Court or the English Crown Court. However, in order to make the right of appeal to the Supreme Court effective, it is necessary for them to give reasons sufficient for the appeal court to understand the basis of conviction and for the Supreme Court to be satisfied that the Magistrates' Court has directed itself correctly in law.

32 The requirement to give reasons should in my judgment be at least the same as that which applies to the English Crown Court when it determines an appeal against conviction from the Magistrates' Court. The Queen's Bench Divisional Court in *R.* v. *Harrow Crown Ct.* (3) held ([1994] 1 W.L.R. at 106–107) that—

". . . the weight of authority is now in favour of the conclusion that when the Crown Court sits in an appellate capacity it must give reasons for its decision. The custom has become, or ought to have become, universal. As long ago as 1981 Griffiths L.J. in this court, when considering the failure of a Crown Court judge to give reasons when dismissing an appeal from a decision of a gaming licence committee, said in *Reg.* v. *Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd.* [1982] Q.B. 304, 314:

> 'it is the function of professional judges to give reasons for their decisions and the decisions to which they are a party. This court would look askance at the refusal by a judge to give his reasons for a decision particularly if requested to do so by one of the parties. It does not fall for decision in this case, but it may well be that if such a case should arise this court would find that it had power to order the judge to give his reasons for his decision.'

Of course as Griffiths L.J. emphasised in the later *Eagil Trust* case [*Eagil Trust Co. Ltd.* v. *Piggott-Brown*] [1985] 3 All E.R. 119, the reasons need not be elaborate, but they must show the parties and if need be this court the basis on which the Crown Court has acted.

The Crown Court judge giving the decision of the court upon an appeal must say enough to demonstrate that the court has identified the main contentious issues in the case and how it has resolved each of them.

In the present case the issues were of fact and not of law. Elaborate reasoning was not required. Miss O'Neill [counsel for the prosecution] submits that what the judge said was enough. Implicit in his statement was a finding that the evidence of the prosecution witnesses had been accepted. Incantations by the judge upon such matters as the burden of proof are unnecessary, she submits, as, in this case, was further reasoning.

The reasoning required will depend upon the circumstances. In some cases the bald statement that the evidence of a particular witness is accepted may be sufficient. In the present case however apparently compelling evidence was called by the defence. It was independent evidence which inevitably cast doubt upon the truthfulness of the evidence of the complainant and her supporting witness. Events at the hospital were relevant and, on the face of it, adverse to her credibility. The prosecution case was in certain respects different from that in the magistrates' court.

The appellant was entitled to know the basis upon which the prosecution case had been accepted by the court. In the present case,

> that involved knowing the process by which the apparently powerful points in favour of the defence had been rejected.
>
> A refusal to give reasons may amount to the denial of natural justice."

33 In the current case, the learned stipendiary magistrate started his judgment by noting that Mr. Garcia did not give evidence but that he (the magistrate) drew no adverse inferences from that. He then recited the history of Mr. Garcia's being charged with assaulting Ms. Young and her withdrawal of the charges. He said, in accordance with the indication he had given on the application to admit bad character evidence, that he "only rel[ied] on this . . . to explain the complainant's state of mind."

34 He said that the parties' communication with each other was generally by WhatsApp and concerned exclusively the children. He summarized the WhatsApp messages which I have set out above. He then said:

> "The defendant, as foreseen by the complainant, then appears at the house, bangs/thumps on the door and then walks around outside calling her name. He is clearly aware that the complainant does not wish to open the door. The complainant then locked herself in her bedroom with her children . . .
>
> His exceptional conduct on that day in attending the flat, knocking/thumping loudly on the door and shouting out her name, in the circumstances of that day, aware that she did not want to open the door and speak to him, was, in my judgment, threatening behaviour and the defendant, I find, must have been aware that it 'might be threatening' and within the hearing of the complainant who was a person likely to be caused alarm thereby.
>
> I have come to this conclusion notwithstanding the evidence I have heard in respect of the past conduct between the defendant and the victim.
>
> To act in that manner, after the WhatsApp exchanges and in the context of their relationship is not, in my judgment, reasonable conduct. I am satisfied beyond a reasonable doubt that the offence is made out and therefore convict."

35 What will constitute adequate reasons will depend on the facts of a particular case. As a general rule, however, the Magistrates' Court at a minimum should state:

(a) What the charges are.

(b) In a few sentences, what the prosecution case is and what the defence case is.

(c) The evidence heard, giving

(i) the name of each witness, the court's assessment of that witness's truthfulness and accuracy and its reasons for that assessment,

(ii) a summary and assessment of any written or other evidence adduced (including any interview of the defendant put in evidence), and

(iii) a summary of any admissions agreed by the parties.

(d) A summary of the law (including any relevant legal defences) unless the law is straightforward and obvious.

(e) The conclusions of fact and, unless it is clear from the court's assessment of the evidence under (c), brief reasons for those conclusions.

(f) The decision on guilt or innocence.

In more complicated cases, or cases where there are difficult issues of law, more comprehensive reasons may well need to be given.

36 Although Ms. Bossino put her case in relation to reasons in a number of different ways, there are three areas where criticism of the adequacy of the reasons can in my judgment properly be made. First, there is a significant difference between the testimony of Mrs. Serfaty and that of Ms. Young. The high point of Mrs. Serfaty's evidence from the prosecution point of view was her testimony that Mr. Garcia gave "a sort of hardish knock so we could hear." She did not give any evidence about his trying to shake the shutters. Ms. Young's evidence is that the knocking, shouting and shaking of the shutters were done in a much more threatening manner, almost as if he were seeking to break down the door. The learned stipendiary magistrate does not refer to this important difference. On Mrs. Serfaty's evidence, there was nothing inherently threatening in the manner of knocking on the door or the shouting of Ms. Young's name, whereas on Ms. Young's evidence there was. That was an important point which the magistrate does not consider. If the magistrate preferred Ms. Young's evidence to that of her mother, he needed to explain why. (He does not refer to the shaking of the shutters either, so it is unclear what his conclusion on this was.)

37 Secondly, it is difficult to understand the way in which the learned stipendiary magistrate dealt with the historic domestic abuse allegations. In the earlier part of his judgment he says that he relies on these to show Ms. Young's state of mind, yet towards the end he says that he comes to his conclusion as to the threatening behaviour of Mr. Garcia "notwithstanding the evidence . . . of the past conduct."

38 This aspect of bad character needed to be treated with care. It is understandable that the prosecution wanted to give background details of the parties' relationship. However, there is a problem. If Mr. Garcia had indeed regularly beaten up Ms. Young in the course of their relationship, then Ms. Young would have been justified in fearing how he might behave when he visited on the day of the alleged offence. However, if the charges had been trumped up by her (as Mr. Garcia alleged), then she would in truth have had no reason to fear his coming round.

39 The magistrate tried to finesse this problem in his ruling on bad character by saying the arrest and subsequent abandonment of the charges went solely to Ms. Young's state of mind and that he did not need to determine the underlying allegations of domestic abuse. Given that he was making no determination of those facts, it was in my judgment incumbent on him to give a much more detailed explanation of how he took the historic allegations into account. As it is, it is unclear whether he took them into account or not and, if he did take them into account, how they affected his final decision. (Ms. Bossino did not submit that the learned magistrate erred in granting the prosecution's bad character application.)

40 Lastly the learned stipendiary magistrate does not give reasons for rejecting Mr. Garcia's defence under s.89(3) and it is unclear whether he did in fact consider this defence. Mr. Garcia's primary case was that the knocking was not threatening, abusive or insulting under s.89(1). However, his secondary case was that, even if Ms. Young felt threatened by his coming round, he was justified in doing that. This was one of his weekends for having the children. Ms. Young was unilaterally preventing him having Rikoh. It was reasonable for him to try and talk to her about her refusal to allow him to have Rikoh for the weekend. Indeed the passage from Ms. Young's evidence, which I have cited at para. 13 above, shows that she would have been agreeable to his coming and checking on Rikoh's health if he had been friendly. It was his threatening manner to which she took exception.

41 The only hint that that defence was considered by the magistrate was at the end of his judgment, where he said: "To act in that manner, after the WhatsApp exchanges and in the context of their relationship is not, in my judgment, reasonable conduct." However, it is unclear whether this passage is directed at s.89(3) or at s.89(1). Even if it were directed at s.89(3), it would have been incumbent on the magistrate to decide (a) whose weekend it was for the children, and (b) if it were Mr. Garcia's, whether that justified his trying to talk face-to-face with Ms. Young about the matter, even if she did not want to talk to him.

42 It follows in my judgment that this head of appeal is made out.

Appeal on the facts

43 In the light of my conclusions in respect of the reasons given by the learned stipendiary magistrate, I can deal with the appeal on the facts quite briefly. The evidence of Mrs. Serfaty in my judgment potentially raises a doubt about whether Mr. Garcia's behaviour in knocking on the door and shouting Ms. Young's name was truly threatening. The WhatsApp exchanges prior to his coming round to Ms. Young's house show that there was no love lost between him and her but do not reveal any threats being made by him. I have already dealt with the problem of placing reliance on Mr. Garcia's having been arrested some five years before, if the underlying allegations were not proved. If the WhatsApp messages are not threatening and the allegations of domestic abuse are not established, there was no reason for Mr. Garcia to anticipate that Ms. Young would feel threatened by his coming over.

44 The evidence suggests that the day of the alleged offence was probably one of Mr. Garcia's weekends for contact with his children. Even if Mrs. Serfaty's evidence is discounted, there is an arguable case that Mr. Garcia was justified in going to Ms. Young's house rather than accept a *fait accompli* that Rikoh was not going to go to him for the weekend. (The burden of proving the s.89(3) defence is on Mr. Garcia on balance of probabilities but this does not affect the point.)

45 None of these matters would necessarily be knock-out points for Mr. Garcia. However, they are sufficient in my judgment to raise a doubt about the safety of the conviction. I would quash the conviction on this ground too.

Conclusion

46 Accordingly, I allow the appeal against conviction.

47 This leaves the question whether to order a retrial. Section 277(3) provides that on allowing an appeal the Supreme Court should quash the conviction and direct a judgment and order of acquittal to be entered. However, this is subject to the power to order a retrial under s.276(1)(e).

48 Since the legislation provides that the Supreme Court should approach an appeal against conviction in the same way the English Court of Appeal would deal with an appeal from the Crown Court, in my judgment the same approach should be taken to the decision whether to order a retrial. In England, important considerations in deciding whether to order a retrial are: (a) the seriousness of the offence; (b) the delay since the alleged commission of the offence; and (c) whether ordering a retrial would be oppressive: Archbold, *Criminal Pleading, Evidence & Practice*, at para. 7–112 (2016 ed.).

49 In my judgment all these consideration tell against granting a retrial. As to (a), this is a low-level public order offence, albeit (on the prosecution case) one which caused Ms. Young significant distress. As to (b), the offence alleged is now some 17 months past, which is a significant delay for a summary-only offence. As to (c), I bear in mind that Mr. Garcia was only fined £200. If there were a retrial, it would be the third time the matter had come to court substantively. There is in my judgment a real risk of a retrial being oppressive.

50 Accordingly in my judgment, I should not order a retrial, but instead direct that an acquittal be entered in Mr. Garcia's favour.

Order accordingly.