



Neutral Citation Number: [2024] EWHC 2730 (Admin)

Case No: AC-2022-MAN-000338

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Date: 31/10/2024

Before :

MR JUSTICE FOXTON

Between :

The King
(on the application of Asif Khan)
- and -
THE CROWN COURT AT MANCHESTER

Claimant

Defendant

The Claimant in person
The Defendant did not appear and was not represented

Hearing date: 24 October 2024

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE FOXTON

Remote hand down. This judgment was handed down remotely at 14:00 on Thursday 31 October 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

Mr Justice Foxton :

1. This is a renewed application by Mr Khan for permission to bring proceedings for judicial review against the refusal of the Crown Court sitting at Manchester to adjourn a hearing by reason of the fact that he lacked legal representation, and the circumstances in which it is said that that state of affairs came about.
2. The application is renewed following refusal on paper by His Honour Judge Stephen Davies on 21 February 2023.

The background facts

3. On 31 December 2020 police attended at an address where Mr Khan was living (“the Relevant Address”) to execute a search warrant under s.18 of the Police and Criminal Evidence Act 1984. That provision gives a power of entry, search and seizure of premises “occupied or controlled by a person who is under arrest for an indictable offence” if the constable has “reasonable grounds for suspecting that there is on the premises” evidence relating to that or another indictable offence and certain other requirements are met (including the authorisation of an officer of the rank of inspector or above).
4. The s.18 search order was made in this case following the arrest of Mohamed Bilal for the indictable offence of kidnapping. Mr Bilal gave police the Relevant Address as his residence and named Mr Khan’s sister, who also lived at the Relevant Address with Mr Khan, as his girlfriend.
5. In *Khan v Commissioner of Police for the Metropolis* [2008] EWCA Crim 723, the Court of Appeal held that the s.18 power is only available where the premises to be entered and searched are in fact “occupied or controlled by a person who is under arrest for an indictable offence”, it not being sufficient for that purpose that the officers seeking to enter and search the premises reasonably believe that they are so occupied and controlled (contrast the issue of whether evidence relating to an indictable offence is on the premises, where a reasonable belief suffices). If a search is not lawful, then the officers were not “in the execution of their duty” in effecting it (*Osman v Southwark Crown Court* (1999) COD 446 and *Michaels v Highbury Corner Magistrates Court v CPS* [2009] EWHC 2928 (Admin), [7]-[9]).
6. When the police arrived at the Relevant Address to execute the search order, the issue was raised as to whether there was any sufficient connection between Mr Bilal and the Relevant Address. When Mr Khan came to the door, he raised that issue in what appears to have been insistent and, the Crown Court concluded, argumentative terms. This led to Mr Khan being charged with obstructing a police officer in the execution of their duty.
7. Mr Khan initially received advice from the duty solicitor but he was dissatisfied with this and instructed a firm of solicitors privately for the magistrate’s court proceedings. The trial was fixed for 12 August 2021. Mr Khan was represented by counsel. I do not have records of that hearing and it is not clear whether the issue of whether Mr Bilal in fact occupied or controlled the Relevant Address was raised. Mr Khan, who cited the *Khan v Commissioner of Police for the Metropolis* case to me, informed me that the case had not been cited at the trial in the magistrate’s court.

8. Mr Khan was convicted. He instructed the same solicitors to bring an appeal against his conviction to the Crown Court, although he confirmed he had no complaints about the counsel who represented him at the hearing.
9. It is apparent that in the period after the decision was taken, Mr Khan became increasingly unhappy with what he saw as the lack of responsiveness on the part of his solicitors.
10. On 22 September 2021, the date for the appeal was fixed for 17 November and Mr Khan was informed of this fact.
11. On 15 November there was contact between Mr Khan and his solicitor at which Mr Khan became aware that the previous counsel was not available for the appeal and that another barrister would be instructed. He also became aware that his solicitor was out of the country.
12. At that point, Mr Khan withdrew his instructions from his solicitors and sought to instruct other solicitors. However, they were unable to accept instructions for the appeal on 17 November 2021 due to the short notice.
13. On 16 November Mr Khan visited the court office and spoke to staff at reception. Mr Khan suggests that he was told by those staff that the hearing would be adjourned until he had found new solicitors who would arrange a new hearing date. He claims he was contacted by staff from the reception desk later that day in which he was told that the hearing had been adjourned but that the judge wanted to see him in person the following day, but it was just a formality.
14. The hearing was listed before Recorder Hannam KC and two justices and there is a transcript of it. Three police officers attended the hearing to give evidence, although in the event only two did so.
15. At the outset, Mr Khan was asked why he was not represented. He referred to the difficulties he had experienced in communicating with his previous lawyer over a considerable period. He said he had come to the court reception the previous day and “they were pretty helpful and said, you know, I’d have to come in and explain it to you”. It is important to note that he did not tell the judge that the reception staff had told Mr Khan that the hearing had been adjourned. It is highly improbable that they would have done so, and in any event Mr Khan could not reasonably have believed that a conversation with the reception desk at the court was the appropriate means to seek and obtain an adjournment of a hearing fixed for the following day.
16. The court heard submissions from Mr Khan on his application to adjourn the hearing. The court retired to consider the matter and then refused the adjournment. The court concluded that it had been Mr Khan’s decision to sack his solicitors at a late stage which had left him without legal representation that day. The court noted a day of court time for the three members of the tribunal had been set aside to hear the case, that the courts faced a very significant backlog, there was body camera footage available of the events, and three police officers had attended. In those circumstances, the court concluded that there could be a fair hearing, and refused the adjournment application. The start of the hearing was put back to 11.30 to allow prosecuting counsel and Mr Khan to review the body camera footage. The Judge explained that both prosecuting counsel and the court would assist Mr Khan with the procedure.

17. After watching the body camera footage, hearing evidence from two police officers and Mr Khan, and submissions from the prosecution and Mr Khan, the court dismissed the appeal. The judgment given by the court noted that Mr Khan had argued his case with care and skill, and was familiar with the detail of it. The court relied principally on PC Havard's body-cam footage in reaching its conclusion, noting that the oral evidence of PC Havard and PC Marvell did not really take matters much beyond the video footage. Mr Khan's own evidence was found to be inconsistent with the video.
18. It is apparent that an argument that Mr Bilal did not occupy the Relevant Address was raised, because the court's judgment states that Mr Khan submitted "why was it that the police were prepared to accept an assertion of a criminal that he lived at an address rather than what was said by members of his family who said that this man did not live there." The court's judgment referred to evidence from PC Harvard that she was aware of intelligence linking Mr Bilal to the Relevant Address and on the video, Mr Khan's sister accepted that she knew Mr Bilal. However, the judgment does not expressly address the possible implications of the issue of whether Mr Bilal in fact occupied the premises on the police's right to enter and search the Relevant Address and there is no express finding as to whether or not Mr Bilal did in fact occupy or control the Relevant Address. Nor are the closing submissions before the court.
19. Mr Khan now seeks to challenge the Crown Court's decision to refuse an adjournment by way of judicial review. He says he was misadvised by the reception staff and that he was not expecting to conduct his own trial; that he had hearing problems and was given inadequate assistance at the trial. He also complains that only 2 of 3 police witnesses were called.

The legal framework

20. The only application before the court is for permission to bring judicial review proceedings to challenge the Crown Court's refusal to adjourn the hearing. While Mr Khan's submissions before me were essentially concerned with the correctness of the Crown Court's decision to reject his appeal – on the basis that the factual predicate to entry and search under s.18 of PACE 1984 that a person arrested for an indictable offence occupied or controlled the Relevant Address was not satisfied – that is not the issue which is before the court.
21. The issue for the court when permission is sought to bring judicial review in respect of the decision of a court to refuse to adjourn a hearing is whether the decision was fair: see *R (on the application of Lehram Capital) v Southwark Crown Court* [2023] EWHC 3190 (Admin), [40]-[43]. In considering that question, it is important to keep in mind that a decision to adjourn or not to adjourn a hearing is a case management question, and one in which a generous approach to the decision of the lower court is required: see the same case at [44]-[55] where a number of relevant cases are listed. It is only in rare cases that the court will interfere with a decision of this kind.
22. In *Crown Prosecution Service v Picton* [2006] EWHC 1108 (Admin), [9], when considering a prosecution appeal against a refusal to adjourn proceedings before the magistrate's court, the Divisional Court summarised the position as follows:
 - i) A decision whether to adjourn is a decision within the discretion of the trial court. An appellate court will interfere only if very clear grounds for doing so are shown.

- ii) Courts should pay great attention to the need for expedition in the prosecution of criminal proceedings; delays are scandalous; they bring the law into disrepute; summary justice should be speedy justice; an application for an adjournment should be rigorously scrutinised.
 - iii) Where an adjournment is sought by the prosecution, magistrates must consider both the interest of the defendant in getting the matter dealt with, and the interest of the public that criminal charges should be adjudicated upon, and the guilty convicted as well as the innocent acquitted. With a more serious charge the public interest that there be a trial will carry greater weight.
 - iv) Where an adjournment is sought by the accused, the magistrates must consider whether, if it is not granted, he will be able fully to present his defence and, if he will not be able to do so, the degree to which his ability to do so is compromised.
 - v) In considering the competing interests of the parties the magistrates should examine the likely consequences of the proposed adjournment, in particular its likely length, and the need to decide the facts while recollections are fresh.
 - vi) The reason that the adjournment is required should be examined and, if it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment.
 - vii) The magistrates should take appropriate account of the history of the case, and whether there have been earlier adjournments and at whose request and why.
 - viii) The factors to be considered cannot be comprehensively stated but depend upon the particular circumstances of each case, and they will often overlap. The court's duty is to do justice between the parties in the circumstances as they have arisen.
23. In the same case, Lord Justice Keene at [11] noted that "a decision to adjourn or not is par excellence a matter of discretion for the court in question, and is not likely to be interfered with by this court". He observed that the delay occasioned by an adjournment was a matter "the justices were fully entitled to take ... into account and allow it to weigh heavily in their deliberations."

Analysis

24. In my view, it is not arguable that this is one of those rare cases in which the Administrative Court should interfere with the discretion as exercised by the court in question. It is apparent from the Crown Court's ruling that the court considered and evaluated the relevant factors, and applied the correct test. The conclusion reached was reasonably open to it, and did not result in a trial which was unfair in all the circumstances.
25. The court was entitled to reach the conclusion that the applicant was fairly able to present his appeal on the day fixed for the trial, notwithstanding the lack of legal representation.
- i) The court was entitled to conclude that Mr Khan was fully familiar with the facts and evidence from the trial before the magistrates.

- ii) The fact that the prosecution required a short adjournment on the day to view the footage does not assist Mr Khan. Unlike Mr Khan, prosecution counsel did not have prior familiarity with this matter, and Mr Khan received the same adjournment they did. This factor simply serves to emphasise that there was a level playing field.
 - iii) The court was entitled to attach significant weight to the fact that the body camera video was the main source of evidence. While Mr Khan says that he was not familiar with this particular footage, this was a short and contained incident and he seen footage of it at the trial before the magistrate's court. The footage was played at the hearing of the appeal and the applicant was afforded and took the opportunity to make submissions on it. He also cross-examined both police officers over a number of pages of transcript.
 - iv) The prosecution was not required to call all three officers. The only evidence before the court was from those officers who were available for cross-examination.
 - v) The court was entitled to attach significance to the duty on the prosecution and the court to assist Mr Khan. There does not appear to have been any complaint on the day that assistance was sought but not provided.
 - vi) The court clearly kept Mr Khan's ability to participate in the proceedings under review and concluded that he was able effectively to present his case, notwithstanding the hearing difficulties which I accept Mr Khan experiences. While ear loops were not available, the court noted that care had been taken to speak clearly using the amplification devices in court. I can see no realistic basis on which the court's conclusion on that issue can be challenged in judicial review.
 - vii) While Mr Khan suggests that the hearing was rushed, it continued until 17.42. There are 20 pages of cross-examination by Mr Khan of PC Marvell, and 17 of PC Havard, as against 10 pages for cross-examination of Mr Khan. Given the straightforward nature of the issues, this was ample time for a fair trial.
26. The court was entitled to and did have regard to the unwelcome delay and increased pressure on the courts at a time of severe stress on the criminal justice system which an adjournment would cause. It is said that the court failed to take sufficient account of the fact that alternative solicitors were willing to appear at an adjourned hearing. The Judge expressly referred to the fact that Mr Khan was in talks with Mullia solicitors to represent him. However, the availability of alternative solicitors does not answer the fact that a last minute adjournment would have been necessary for those solicitors to act, necessitating the non-use of a sitting day, the re-attendance of the officers and a period of delay until the court could accommodate a further hearing.
27. The court was entitled to conclude that it was the applicant's own decision very shortly before the hearing to withdraw instructions from his solicitors which had left him unrepresented at the hearing. The court's conclusion that there had been a lengthy period of dissatisfaction by Mr Khan with his previous solicitors is amply borne out by the documents Mr Khan has exhibited.
28. It is said that the court failed to pay any or any sufficient regard to the advice said to have been given to Mr Khan by the court reception. However, the only information provided by Mr Khan to the court as recorded on the transcript was that he had been told by

reception that he would have to come in and explain himself to the judge. The court referred to (and therefore had regard to) that evidence, but concluded that the applicant could not reasonably treat a conversation of this kind with staff at a reception desk as somehow vacating the hearing or as an indication that the trial would not proceed. That conclusion was open to the court, and is, I would respectfully suggest, obviously correct. Nor does the applicant say that he could have secured legal representation for the date fixed for the hearing in any event but for any such conversation.

29. For those reasons, and notwithstanding Mr Khan's courteous and clear submissions, the renewed application for judicial review is dismissed. Like His Honour Judge Stephen Davies, had I been persuaded that the challenge was arguable, I would have been willing to extend time as necessary, Mr Khan having filed a claim form within the three month period, albeit no sealed claim form was issued until 30 August 2022 due to delays in providing the supporting documents and by the court in sending Mr Khan a link to upload that material.
30. The reality is that Mr Khan's real complaint is that the Crown Court concluded that the police had a power to enter and search the Relevant Address under s.18 of PACE 1984 when, Mr Khan submits, the factual predicate for that power (viz that Mr Bilal occupied or controlled the Relevant Address) was not satisfied. Mr Khan advanced that argument before me with conviction. However, I do not think it is arguable that that complaint can be linked with the failure to adjourn which is the only decision with which I am concerned. The potential significance of the issue of whether Mr Bilal occupied the Relevant Address was one to which Mr Khan was clearly alive at the time of search, which it was open to his barrister to take at the trial before the magistrate's court (and may well have been taken, for all I know) and which was an issue which was raised by Mr Khan during his appeal.
31. I express no view on the issue of whether it was open to Mr Khan to challenge the decision of the Crown Court on the appeal itself under s.28 of the Senior Courts Act 1981 on the basis that it was wrong in law to conclude, on the facts found by the Crown Court, that the s.18 search was legitimate (a. s.28 challenge involving an application to the Crown Court to have a case stated by the Crown Court for the opinion of the High Court). Such an application has to be made within 21 days of the decision (Crim PR r.352) although it is possible at the same time as applying for the Crown Court to state a case to apply for an extension of time (Crim PR r.35.2(d)(i)). I would note that some three years have now passed since the dismissal of Mr Khan's appeal, although it can be said that during that period, Mr Khan has actively been seeking legal redress against his conviction, albeit not by the appropriate means, and has been without the benefit of legal advice. I also note that it would not have been open to Mr Khan to challenge any conclusion by the Crown Court that Mr Bilal did in fact occupy the Relevant Address.
32. Mr Khan is entitled to apply to the Court of Appeal for permission to appeal against *this* decision under CPR 52.8(1). That application must be filed with the Court of Appeal within 7 days of the date of this decision.