



The Rochford Case

When is a defence statement not a defence statement? When it puts the prosecution to strict proof – or not, as the case may be. Defence practitioners may be interested to note that I represented a defendant who refused the trial judge's order to amend his defence statement. The defendant, Mr Rochford, was found to be in contempt of court, as was his counsel, and the defendant was given a prison sentence for contempt. Counsel also faced potential contempt proceedings. The matter was heard before the Court of Appeal (Criminal Division) as a matter of urgent importance.

The case

In brief, the defendant faced an allegation of dangerous driving, an allegation he refuted, although he acknowledged there was CCTV footage proving he was seen to get into the vehicle that was observed to be driven in a dangerous manner. With the assistance of counsel, I drafted his defence statement, the document in which the defence is obliged to set out general details of the defence and, where appropriate, details of alibi. The defendant totally refuted ever being in the vehicle at the material time and put the Crown to strict proof of that fact. His Honour Judge Gullick, who heard the case, ordered that the defendant confirm his whereabouts in his defence statement, prior to the start of the trial. The defendant, having received further advice in private and confirmed by counsel, refused to clarify this point.

When the defendant, Mr Rochford, refused the judge's requirement that he should provide full details of his defence, HHJ Gullick took the view that the tribunal was entitled to draw an adverse inference from his silence and that his refusal to amend his defence statement (on the advice of myself and counsel) amounted to contempt. I took the view the defendant had not refused and was not required to disclose his instructions and advice given during the confidential discussions which had taken place with me and with his barrister, which, potentially, could lead to his incriminating himself.

Appeal

The defendant was imprisoned, his trial adjourned and an application was made immediately to the Court of Appeal (Criminal Division). Bail was granted the next day on the same terms (unconditionally) and the matter listed for an urgent full hearing before the full Court of Appeal.

On 28 July, the matter came before the Court of Appeal. From my professional viewpoint, what was important was the question of self incrimination and privilege: how far can a solicitor go to protect his client's interest, even if there is a threat of imprisonment against the legal representative?

In relation to this point, it was argued successfully that the fundamental rights of legal professional privilege and

the defendant's privilege against self incrimination were not taken away by s 6A of the Criminal Procedure and Investigations Act 1996. The defendant was required by that section to disclose what would happen at trial, but not his confidential discussions with his advocate, nor was he obliged to incriminate himself.

The other matter of concern was my duty – ultimately to the court and, secondly, to the client – to explain the statutory obligation under section 6A and the consequences that followed from disobedience of it. This again was strongly affirmed by the appeal court.

The court said that a failure by a defendant to comply with the requirements of ss 5(5) and 6A of the Criminal Procedure and Investigations Act 1996, to provide a defence statement containing the general nature of his defence, did not constitute a contempt of court and was only punishable with sanctions specified in s 11 of the 1996 Act, namely, that a court or other party is permitted to make comment on the failure, and that the court or jury may draw inferences as to guilt.

I would urge all practitioners to read the case report *R v Rochford* [2010] WLR (D) 220.

Case resolved

The trial then took place in August. Counsel for Mr Rochford made a half-time submission and the jury was directed to find him not guilty. The reason for this was that the Crown had not proved its case: the defendant, as asserted in his defence statement, was not driving the vehicle at the material time. The police officers could not say, as a fact, that the defendant was driving dangerously at the material time and that they had constant continuous sight throughout the period when the vehicle was followed and finally stopped and searched. The CCTV evidence available also showed a break in the chain of events.

This case should be a salutary warning for both counsel and solicitors. They should keep their eye on the ball and, in appropriate cases, simply put the Crown to strict proof. This is especially true with the introduction of the Criminal Procedure Rules 2010, which will feature more in the future of our dynamic criminal justice system.

I am grateful to counsel who acted in the best traditions of the Bar. In the Crown Court, Richard Bentwood was threatened with being imprisoned for contempt, alongside the defendant he was representing. In the Court of Appeal, Mr Bentwood again appeared for the defendant (assigned by the Registrar of Criminal Appeals) and John Ryder QC was instructed by the Bar Council, as interested party.

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