



Courts and  
Tribunals Judiciary

**IN THE WESTMINSTER MAGISTRATES' COURT**

District Judge (Magistrates' Courts) Sternberg

**BETWEEN**

**Rex**

**v**

**Stephen LENNON**

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**RULING ON SUBMISSION OF NO CASE TO ANSWER**

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**Mr. Bryan for the Prosecution**

**Mr. Williamson KC for the Defendant**

**Hearing date: 22-23 April 2024**

**I. Introduction and Summary**

1. Stephen LENNON, the defendant, faces one charge that on 26<sup>th</sup> November 2023 at London in the Borough of Westminster he failed, without reasonable excuse, to comply with a direction given to him under section 35 of the Anti-social Behaviour, Crime and Policing Act 2014 in that he failed to leave the locality specified, namely outside of 215 Strand, London WC2R 1AP.
2. The defendant entered a plea of not guilty to this charge and the case was set down for trial. On 22 April 2024, having dealt with preliminary matters, I heard the prosecution's opening and live evidence from three prosecution witnesses, Inspector Stephen Parker,

Sargeant Stuart Mellody and Police Constable Jamie Simmons. Each witness was examined in chief by Mr. Bryan and cross-examined by Mr. Williamson Kings Counsel. Other witness statements were read. I saw two clips of body worn video footage of the circumstances leading up to and including the arrest of the defendant. The audio recording of the defendant's interview was played.

3. At the close of the Prosecution case Mr. Williamson KC made a submission that there is no case for the defendant to answer. Mr. Bryan opposed the submission. This is my decision on that submission.
4. At the outset I record that it is unusual for a Magistrates' Court to give a written decision on a submission of no case to answer. Why, then, am I giving a written judgment when the Court would normally give a brief oral ruling? The answers are that the parties, the press and the public are entitled to know why this Court has concluded as it has. Providing written reasons will also assist any higher Court to understand why I have reached this decision should there be such a challenge to my decision.

## **II. The Law**

5. Part 3 of the Anti-social Behaviour Crime and Policing Act 2014 ('the 2014 Act') empowers a police officer to authorise the giving of a direction to a person to leave a specified area. Failure to comply with such a direction without a reasonable excuse is an offence punishable with imprisonment for up to three months or a fine. Sections 34, 35, 36 and 39 of that Act provide as follows:

### 34 Authorisations to use powers under section 35

(1) A police officer of at least the rank of inspector may authorise the use in a specified locality, during a specified period of not more than 48 hours, of the powers given by section 35. "Specified" means specified in the authorisation.

(2) An officer may give such an authorisation only if satisfied on reasonable grounds that the use of those powers in the locality during that period may be necessary for the purpose of removing or reducing the likelihood of—

(a) members of the public in the locality being harassed, alarmed or distressed, or

(b) the occurrence in the locality of crime or disorder.

(3) In deciding whether to give such an authorisation an officer must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention. "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

(4) An authorisation under this section—

- (a) must be in writing,
- (b) must be signed by the officer giving it, and
- (c) must specify the grounds on which it is given.

### **35 Directions excluding a person from an area**

(1) If the conditions in subsections (2) and (3) are met and an authorisation is in force under section 34, a constable in uniform may direct a person who is in a public place in the locality specified in the authorisation—

- (a) to leave the locality (or part of the locality), and
- (b) not to return to the locality (or part of the locality) for the period specified in the direction (“the exclusion period”).

(2) The first condition is that the constable has reasonable grounds to suspect that the behaviour of the person in the locality has contributed or is likely to contribute to—

- (a) members of the public in the locality being harassed, alarmed or distressed, or
- (b) the occurrence in the locality of crime or disorder.

(3) The second condition is that the constable considers that giving a direction to the person is necessary for the purpose of removing or reducing the likelihood of the events mentioned in subsection (2)(a) or (b).

(4) The exclusion period may not exceed 48 hours. The period may expire after (as long as it begins during) the period specified in the authorisation under section 34.

(5) A direction under this section—

- (a) must be given in writing, unless that is not reasonably practicable;
- (b) must specify the area to which it relates;
- (c) may impose requirements as to the time by which the person must leave the area and the manner in which the person must do so (including the route).

(6) The constable must (unless it is not reasonably practicable) tell the person to whom the direction is given that failing without reasonable excuse to comply with the direction is an offence.

...

### **36 Restrictions**

(1) A constable may not give a direction under section 35 to a person who appears to the constable to be under the age of 10.

(2) A constable may not give a direction under section 35 that prevents the person to whom it is given having access to a place where the person lives.

(3) A constable may not give a direction under section 35 that prevents the person to whom it is given attending at a place which the person is—

(a) required to attend for the purposes of the person's employment, or a contract of services to which the person is a party,

(b) required to attend by an obligation imposed by or under an enactment or by the order of a court or tribunal, or

(c) expected to attend for the purposes of education or training or for the purposes of receiving medical treatment, at a time when the person is required or expected (as the case may be) to attend there.

(4) A constable may not give a direction to a person under section 35 if the person is one of a group of persons who are—

(a) engaged in conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (peaceful picketing), or

(b) taking part in a public procession of the kind mentioned in subsection (1) of section 11 of the Public Order Act 1986 in respect of which—

(i) written notice has been given in accordance with that section, or

(ii) written notice is not required to be given as provided by subsections (1) and (2) of that section.

(5) In deciding whether to give a direction under section 35 a constable must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention. "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

### **39 Offences**

(1) A person given a direction under section 35 who fails without reasonable excuse to comply with it commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction—

(a) to imprisonment for a period not exceeding 3 months, or

(b) to a fine not exceeding level 4 on the standard scale,

6. Criminal Procedure Rule 24.4(3)(d) provides:

(d) at the conclusion of the prosecution case, on the defendant's application or on its own initiative, the court—

(i) may acquit on the ground that the prosecution evidence is insufficient for any reasonable court properly to convict, but

(ii) must not do so unless the prosecutor has had an opportunity to make representations;

7. The correct approach to a submission that there is no case for a defendant to answer was set out by Lord Lane CJ in *R v Galbraith* [1981] 1 WLR 1039 at p.1042B-E:

*“How then should the judge approach a submission of “no case”? (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence, (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury. It follows that we think the second of the two schools of thought is to be preferred.*

*There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”*

8. The application of these principles to a summary trial is set out in **Blackstone’s Criminal Practice 2024** at D.22.51-22.52 which I will apply in my decision.

### **III. The Relevant Evidence**

9. In this part of my decision I summarise the evidence which is relevant to my decision.

10. Inspector Stephen Parker was the first witness to give live evidence. The key parts of his evidence in chief were as follows:

- a. On the weekend of 25-26 November 2023 he was ‘dual rolled’. In addition to his normal duties as a partnership inspector for the West End of Westminster he was also a public order inspector tasked with providing a policing overview around the Israeli embassy and the areas around Kensington Palace Gardens.
- b. On 26 November 2023 he believed there was a march by the Palestine Solidarity Campaign taking place from Hyde Park, going down Park Lane towards the US Embassy. There were other protests going on in London and up to eight football matches. The police were also receiving intelligence that a right wing group were potentially also attending. Overarching all of this were concerns to businesses in London. There had been violent protests at the Cenotaph around remembrance day on 11 November 2023 which had included drunkenness, shouting and fireworks being set off in Whitehall. He had personally witnessed some of this

disorder on 7 November 2023.

- c. In considering what options to utilise, he took articles 10 and 11 ECHR as his starting point. He considered the impact on businesses and worked through considering the impact on them, took legal advice and came to the conclusion that a section 35 dispersal order would be the minimum way of impacting those rights under articles 10 and 11 and equally maintaining the safety of inner London. He gave the area a lot of thought, wanting it to be as small as possible, to comply with section 35 and people's rights under articles 10 and 11. There had been disorder in Westminster, in the West end, as far up as Leicester Square and Soho. There had been disorder in Whitehall. The march was going to Hyde Park. The geographical area would have to be the whole borough of Westminster, he extended the area covered to include the part of Kensington and Chelsea going towards the Israeli embassy. He wanted to balance the maximum length of the order, being 48 hours against people's rights and wanted it to be the minimum period.
- d. He put in place an authorisation under section 35 of the Anti-social Behaviour Crime and Policing Act 2014 from 17:00 on 25 November until 00:30 hours to prevent drunken behaviour and on 26 November 2023 from 10:14am to midnight. He did not use the full extent of his powers. An order on 26 November extended the existing order from 10:14, he was trying to be as proportionate as he could. He had an incident log running, a CAD which he reviewed throughout the morning of 26 November. Intelligence came in around 10am on Sunday 26 November that a right wing function were coming to central London. He carefully considered the possible impact to businesses based on what had happened the weeks before, the likelihood of violence and serious violence. Having consulted at Silver and gold level he made a decision to put the authorisation in at 10:14.
- e. He recalled that there was specific intelligence relating to the defendant as well as more general intelligence. He was not involved in the decision to issue him with a notice under section 35. He was at the Israeli embassy at the time.
- f. He produced a document which is the Form 35A, it records his rationale for putting in place a section 35 dispersal order. The document is his authorisation, signed by him. The date at the bottom of the order is 24 November 2023. This was part of an ongoing process that started on 22 November. After 2 days he made a decision and recorded it on this document on 24 November. An incident log starting on 23 November recorded his rationale for this. On the day the Bronze decision logs would have been filled out. The authorised specified locality

is described as version 2 as the first version did not include Kensington Palace Gardens. The march was coming down Hyde Park, that is why it the document produced is version 2. The Strand near the Royal Courts of Justice is covered by this authorisation. Section 3 of the form records the grounds, his reasons and rationale. It sets out his grounds for issuing the order. He was constantly doing a proportionality assessment and considering articles 10 and 11 ECHR and trying to keep the area as small as possible.

11. Cross-examined by Mr. Williamson KC he gave the following relevant evidence:

- a. On that particular occasion, he did not read the Home Office guidance relating to these orders. In the document he put in there that he had read it, he did not read that document on the day and had not done so previously. It is a good operational point for the future. He cut and pasted some of the rationale from the Home Office guidance, he had spent two days considering his decision. As an inspector he said he was always open to operational learning. There was legal advice from above him at Silver and Gold level and this document had come down. He cut and pasted from that into his authorisation.
- b. He thought the authorisation related to a PSC march and the wider impact on the community, businesses and tourism in Westminster. He was careful and considered in the use of the power, it was not for the maximum of 48 hours and took two hours to deliberate over my decision.
- c. He used the national decision making model. He requires his sergeants and constables to use it. It can be applied to spontaneous incidents. One of the hallmarks of the proper use of a police power is to explain it if it is challenged. It is good practice to write down reasons for a decision.
- d. The extension of the order was around the area of the Israeli embassy. Offhand he did not know if he had a copy of version one of the authorisation, most likely that may have been overwritten, I am not sure where version 1 is. The form says *'after completion this form must be scanned (along with any maps) and attached to a criminal intelligence report*. He was not sure where version 1 is, it should not have been overwritten.
- e. He was shown a document containing the timings on the form 35A. The authorisation was to come in at 14:00 on 26 November. He brought the order in earlier because of information relating to activity on the Sunday. He brought it in at 10:14. Version 1 was drafted around 24 November 2023. He got the information which caused him to bring in the order earlier on the Sunday. It is most likely that version 2 was completed on 26 November and he did not change

the date of the form. The form states that each version of the form requires a new form 35A to be completed. There are mistakes in the form. It is most likely that the document was signed on 26 November. He took his role very seriously. The evidence of lawfulness of the authorisation is that there is a document not signed on the date it said it was. We cannot be satisfied there was a lawfully authorised order in place.

- f. There were negotiations regarding the document with senior officers. He accepted some text was cut and pasted into his reasons.
- g. Section 36 of the 2014 Act imposes restrictions. The general guidance is that the press and journalists should not be interfered with.

12. In re-examination he said:

- a. The document in the form 35A was most likely typed on a laptop in the back of a public order carrier, trying to make 20 decisions. His signature was typed. He would have been sat in a public order carrier, with a laptop with no battery. The first order was made on 24 November. With a laptop with the battery going, he updated the order. The date and time relates to version 2 which extends the area of the restriction. Version 2 comes into play on 26 November when he was at the Israeli embassy and visualising the wider impact of the march coming across to Kensington.
- b. The signature on the document was ongoing. The date of 24 November relates to version 1. He overtyped the document for version 2 and did not change the date. He started to type to add to the document on 25 November when people were being arrested. The landscape document has come from Version 1 of the authorisation.

13. In answer to questions from the Court he said:

- a. He is dyslexic and made errors updating the form, that may be due to the conditions. His laptop was dying and he was updating the form.
- b. The order came in at 10:14 on 26 November. There is not a version of the form recording 10:14 as the start time on that day, it would have been recorded on an incident log.

14. PS Stuart Mellody was the second witness to give live evidence. The relevant evidence that he gave is as follows:

- a. 26 November 2024 he was deployed to The Strand in London. He is a Cheshire officer and had only been to London once before. He was deployed to assist with



the policing of a march regarding anti-Semitism.

- b. By around 1:00 PM there were over 1,000 members of the public congregating around The Strand. An inspector alerted him that the defendant had arrived at the Soho coffee shop on the Strand. He was talking to members of the public and members of the press. Inspector Sullivan went into the coffee shop and spoke to the defendant. The inspector informed him that once the defendant had finished his breakfast PS Mellody was to issue him with the section 35 dispersal notice. He spoke to another officer and asked for a copy of the order and a dispersal map as he was not familiar with the area. He was not provided with the map. He was concerned that the presence of the defendant would arouse hostility from the crowd.
- c. As the defendant approached the coffee shop he could hear the defendant arguing with members of the press, talking about Hamas and propaganda and saying the person he was talking to was a disgrace.
- d. He issued the defendant with a section 35 dispersal notice and tried to go through the form with him. He asked the defendant a number of questions. The defendant was angry and upset that he was being issued with the notice. There was a lot of shouting and it was hard to get the defendant's attention. There were supporters of the defendant present. His presence was likely to cause harassment to other people who were attending the march. Whilst this was something he had been told to say he agreed with it. He managed to complete the form. The defendant did not want to give his home address. He gave the defendant a direction to leave the vicinity. The defendant declined to take the written direction. The defendant came down the steps outside the coffee shop and held onto the metal railings. He released his grip and was escorted away down The Strand.
- e. He was shown footage from his body worn camera of the direction being issued and the defendant's subsequent conduct.

15. Cross-examined by Mr. Williamson KC he said:

- a. He is aware of the provisions of section 35 of the Anti-social Behaviour Crime and Policing Act. He ensures he is aware of his powers and keeps himself up to date. He has not looked at the Home Office guidance in relation to that section we had training on it. He wanted to ensure that he and others under him are acting lawfully. He understands that a notice under section 35 should be in writing if practicable, that it must specify the area to which it relates that may impose requirements as to the time by which the person must leave the area and

the manner in which the person must do so.

- b. He took advice from other officers on the route the defendant should follow to leave The Strand. He did not tell the defendant that failing to comply with the direction without a reasonable excuse was an offence. While he did tell him that failure to comply was an offence, he did not explain that that was a defence of reasonable excuse.
- c. The defendant could have left of his own accord. He did not have to do so whilst the notice was being explained to him. He accepted that it sounds correct that there are approximately 35 seconds on the body worn video footage between the order being issued to the defendant and his arrest.
- d. He accepted that the defendant was repeatedly saying that he was working. He asked the defendant to disperse based on his being a former member of the EDL rather than being a journalist. He had a clear direction from his supervisors to issue a notice under section 35 and had consulted with his superiors and an inspector. If the defendant had said he wanted to leave he would not have issued the direction. The original notice was retained at Lambeth police station. He believes that Inspector Fisher gave authority for the section 35 direction. He administered it to the defendant. Inspector Sullivan was the supervisor for that deployment.

16. I also heard evidence from PC Simmons who was involved in the arrest of the defendant. His evidence in cross-examination was that there were 60-90 seconds between the direction being issued and the defendant's arrest, it could have been 35 seconds. It is correct that the defendant asked him 'which way are you taking me'. The defendant said he was working, he did not say he was a reporter, though he may well have done. He did not mention considering the defendant's article 10 and 11 EHCR rights in his statement.

17. As set out at [2] above, in addition to the live evidence PC Teasdale's statement was read: he was also present when Sargeant Mellody gave the dispersal direction to the defendant and during the defendant's arrest. Inspector Sullivan's statement was read. He was deployed to The Strand on 26 November 2023. He confirmed that a section 35 authorisation was issued by Chief Inspector Fisher of the City of London police at 11:22 on 26 November 2023. He was also present when PS Mellody gave the direction to the defendant and during his arrest. Video footage of the defendant being given the section 35 direction and his arrest was played. In that footage the defendant claims that is being arrested on the direction of the Mayor of London and the Commissioner of the Metropolitan Police (there was no evidence to indicate that these statements were

correct). The audio of his interview following his arrest was also played.

#### **IV. The submissions of the parties**

18. Mr. Williamson KC made the following submissions:

- a. There is insufficient evidence for the prosecution to prove its case. There are a litany of catastrophic failures in the exercise of the police's powers that must be construed carefully and rigorously affecting the fundamental rights of the citizen under the ECHR.
- b. Beginning with the evidence of Inspector Parker: there was not a lawful authorisation in place, he purported to exercise or authorise that power, but admitted there was not such an authorisation and that we could not have any confidence that there was. The section 35A authority is not accurate. Originally the order began at 14:00 on 26 November, after the time of purported arrest. Inspector Parker said he carried out the amendment to the order in the afternoon as people were being arrested. There is no record of this. Section 34(4) specified that authorisations must be in writing, this was not complied with.
- c. Under section 35(1) before a notice can be issued a PC must be satisfied that sections 35(2) and (3) are met. There has been no evidence regarding section 35(3). No one gave any evidence that it was necessary to give the direction to reduce the likelihood of the events mentioned in subsection (2).
- d. The prosecution's case also fails on section 35(6), that the officer issuing a direction must inform the person to whom the direction is addressed that failure to comply without reasonable excuse is an offence.
- e. Officers arresting the defendant believed they were dealing with an authorisation given by Inspector Fisher, covering a differing area. Inspector Parker believed he was dealing with a different march.
- f. There was no failure to comply: the defendant walked down the steps of the coffee shop, he said a cameraman was his colleague, he was then arrested.

19. For the Prosecution, Mr. Bryan submitted as follows:

- a. Inspector Parker did himself a disservice by suggesting the Court could not be sure that there was a section 35 authorisation in place. There was a lawful order in place. The law does not require that an amendment to an order should be signed and dated. It is good practice, not a legal requirement. From his evidence,

the amended order was in place at the time that the dispersal notice was issued. He had not corrected the time and date from the original issued notice. He had amended the authorisation, he had not updated the date and time and had not re-signed it. The order together with the evidence of what he said and re-drafting it is the evidence, the date and the time. There is no documentary evidence regarding the disparity of 10:00 on the written authorisation and 10:14 in his oral evidence.

- b. As to PS Mellody's evidence, the Court can infer from his evidence that the order was necessary from his briefing, conversation with others and subsequent actions regarding removing the defendant from the scene that he did in fact conclude it was necessary to issue that order.
- c. As to the mandatory wording of section 35(6), the legislation uses the words 'unless it is not reasonably practicable' PS Mellody had great difficulty in informing the defendant because of his aggressive behaviour and his failure to listen, he conveyed the essence. The absence of his words is not fatal, the circumstances are relevant and it did not make it practicable to give a word perfect warning.
- d. As to time to comply with the notice, 35 seconds is a long time, the defendant was not compliant and was not going with the officers, he grasped the railing which shows a determination not to go with the officers. Nothing in the footage shows it was merely a prop to steady himself.
- e. Some of the officers seem to have been misinformed about the name of the Inspector who had authorised the order. One related to the City of London, one Westminster, the officers not from London referred to the order relating to the City of London, that is not fatal, it is a mistake in the name of the officer. There is no dispute that an order was made and it purported to apply to the area in which he was served with the notice.

## **V. Decision**

20. The first part of the defence's challenge at this stage is that the authorisation given by Inspector Parker. I consider that the criticisms of that process and the authorisation made by Mr. Williamson KC are well founded.
21. I remind myself that I am not conducting a Judicial Review of the decision to authorise the use of powers under section 35. I must be satisfied that there is evidence on which a reasonable court might convict. Where, as here, it is alleged that the defendant failed to comply with a direction excluding him from a particular area, I must be satisfied that

there was a proper authorisation of the use of the powers given under section 35 of the Anti-social Behaviour Crime and Policing Act 2014.

22. *First*, Inspector Parker's decision to authorise the use of the powers contained in section 35 was based on a mistake of fact, I find that it was a material mistake of fact. His evidence was that he based the decision to give authority under section 34 to make use of the powers in section 35 on the basis that it was required to prevent disorder at a march by the Palestine Solidarity Campaign. That was not the march that was taking place on 26 November, which was a march to protest against antisemitism.
23. *Second*, the decision he reached referred to Home Office guidance which he had never read as part of the rationale for making the order. Whilst cutting and pasting from guidance *per se* may not be objectionable, the authorising officer had not considered the Home Office guidance he was referring to. That does not mean it was necessary for him to have read every word of the guidance document, but the mere rote entry of material provided by others does not show that the officer did consider that guidance or apply it when making his decision in this case.
24. It is correct, as the Home Office guidance makes clear, that the power to restrict liberty and freedom of movement should not be invoked lightly. It follows that decision making and the rationale for making a decision should be rationale, lawful and reasonable. It is not possible for me to conclude that that guidance was properly followed in a lawful manner in the authorisation that was provided given the confusing evidence about the process by which that order came to first be drafted, amended into version 2 and then was updated on 26 November 2024, none of which was recorded in writing, save for the version of the authorisation presented to the Court.
25. *Third*, and importantly in my judgment, the authorisation provided to the Court records that it was dated and signed on 24 November 2023. It recorded that the powers it authorised could be exercised between 10:00 and 23:59 on 26 November 2023. This was not the authorisation which was in force when the defendant was arrested. Inspector Parker's evidence was that intelligence which necessitated the authorisation being brought into force on 26 November 2023 at 10:14 hours came to light later, early on Sunday 26 November. The order is still dated 24 November 2023, despite the officer's rationale being informed by events that came to light after it was issued and the officer's evidence that the order was in fact amended and updated on 26 November 2023. It is not clear whether the authorisation placed before the Court was version 2 of that

authorisation or a subsequently amended version. What is clear is that the final version which was the authorisation said to underlie the direction given to the defendant, was not presented to the Court and there was no evidence of the existence of that authorisation beyond Inspector Parker's statement that it was recorded in the Bronze log. The log was not produced to the Court or put in evidence. Nor was the version of the authorisation relied on by the prosecution. I am unable to conclude that the authorisation in force at the time of the defendant's arrest was properly put in writing and signed and dated at the time that it was given as required by section 34(4) of the 2014 Act.

26. In short there is no evidence before the Court on which a properly directed tribunal could conclude that there was a lawful authorisation of the use of powers given by section 35 of the 2014 Act in force at the time of the direction given to the defendant and his subsequent arrest. The evidence of Inspector Parker on this critical issue was unambiguous. In my judgment, it did not depend on my taking a particular view of his evidence. He accepted that the Court could not be satisfied that there was a valid authorisation of the use of the section 35 power in force at the time that the offence alleged in this case is said to have occurred.
27. I accept that the decision to amend the order was made under pressure of time and in other circumstances which were pressurised. That does not sit altogether comfortably with Inspector Parker's evidence that he had previously been considering providing authority to use a dispersal power. Equally I accept Inspector Parker's evidence regarding his dyslexia and the difficulty he has with close reading of documents. However, none of that releases an officer authorising the use of powers under section 35 from complying with the mandatory requirements of that section and in making an order which is lawful, valid, comprehensible and in writing. Regrettably, the evidence I received shows that the order relied on by the prosecution in this case was not properly recorded, was not properly updated, and ultimately, I conclude, not valid.
28. If I am wrong about my conclusions above, and there is evidence of the existence of a valid authorisation on which a properly directed Court might convict, I conclude in the alternative that the second limb of the test set out in *Galbraith* is also met. The evidence of Inspector Parker about the circumstances in which he came to make, vary and update the authorisation was confused and confusing. There was a concerning lack of documentary evidence to support this evidence. I conclude that it was so weak and tenuous that it does not provide a basis on which a reasonable tribunal could convict.

29. *Fourth*, PS Melody gave evidence regarding the directions he gave to the defendant which he believed was as a result of an authorisation provided by a different officer, Chief Inspector Gillcrest. However, it was agreed that this authorisation related to dispersal from the City of London which is not the place where the defendant was located at the relevant time. It is of no relevance to the charge the defendant faces which relates to his conduct in the City of Westminster. Accordingly, that separate authorisation does not assist me as the defendant was not located within the City of London at any material time.
30. Mr. Williamson KC also submitted that the prosecution had failed to prove that the condition in section 35(3) was met, that the constable giving the direction considered it necessary for the purpose of removing or reducing the likelihood of events in section 35(2)(a) or (b). I accept that there was no direct evidence on this point. Whilst it is not necessary for me to reach a conclusion on this challenge given my finding on the first part of the submission, I am satisfied that at this stage of the case an inference that it was necessary to give such a direction for the purpose mentioned in section 35(3) could be drawn from PS Melody's evidence and I reject the defence's arguments on this ground.
31. Equally, I do not accept that failure to comply with section 35(6) of the 2014 Act gives rise to an omission which is fatal to the prosecution's case. The evidence of PS Melody was that it was not reasonably practicable to explain to the defendant that he had a defence of reasonable excuse. Having viewed the footage of the incident, it was taking place in a noisy and crowded area and I accept that there is sufficient evidence that it was not reasonably practicable for PS Melody to use those words when explaining the direction to the defendant.
32. Finally, it is not necessary for me to reach a conclusion on whether the prosecution in fact proved that the defendant failed to comply with the section 35 direction. However, I observe that whether the period between the direction being given and the defendant's arrest was either 35 seconds or 60-90 seconds. That is a very short period for an officer to conclude that a person is failing to comply with a section 35 direction without a reasonable excuse.

## **VI. Conclusion**

33. For the reasons set out in this ruling I am not satisfied there was a lawful authorisation for the use of powers under section 35 of the Anti-social Behaviour

Crime and Policing Act in place at the time of the defendant being given a direction under section 35 and his subsequent arrest.

34. It follows that there is no case for the defendant to answer. Accordingly I must dismiss the charge

35. This is the judgment of the Court.

**District Judge (Magistrates' Courts) Sternberg**

**23<sup>rd</sup> April 2024**