

Criminal litigation

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BML W4000

The matter of kim cottrell

This memo is addressed to ade adebayo

On the 2nd of March 2024 one of our clients Kim Cottrell was arrested on one count of abh where she left bruises on the face of bob. First, what is abh

ASSULT OCCASIONING BODILY HARM S47

The offences against person act 1861 the court must prove the offence of assault was committed and actual bodily harm was caused to the victim. If there was any harm caused to the victim via the defendant which has caused any bruising and swelling the maximum sentence in crown court can be 5 years and 7 years for racially aggravated assault.

When an assault is taken place wherever intentionally or recklessly it must be beyond reasonable doubt that the defendant caused the bodily harm. For example, DPP v Parmenter (1992) was proven the same offence was held similar to battery Proving that the assault of abh did follow

Actus reus (the guilty act) can be complicated to understand and be proven in the offences against the person act 1861. With this case we know kim acted out in rage and attacked bob leaving bruises on his face and side of his cheek bone and jaw line.

Abh is actual bodily harm. There are 2 types of abh that can be committed with intention or recklessly in this case it would be intention. abh is when the defendant that caused harm to the victim's body it does not have to have been a vicious attack of any sort as long as the assault has happened, and if the victim's body has any type of mark on it it will be considered as actual bodily harm. So, this can consist of many types of injuries such as bite marks scratches bruises of any kind and even spital. To be charged with abh the defendant must have wanted to cause unlawful force to the victim. This can be a trial either way which we will get more into in the next paragraph

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With this case as such this can be a trial either way this is where a defendant has committed an offence within the UK and his or hers trial/hearing is in either magistrate or crown court this can be extremely critical with certain cases as both courts have 2 types of powers, limits, and restraints. There are advantages or both and disadvantages.

Advantages of crown court

In the crown court you can have a trial by jury this will consist of 12 jurors who will decide if you are guilty or not guilty this can work in the favor of the defendant if he or she can win over the jury, in the crown court the defendant has a choice of a barrister. A barrister has a special criteria and is more advanced in their knowledge of expertise. This can be particularly important in some or more advanced and complex cases

Disadvantages of crown court

When it comes to crown court the sentence can be greater than magistrates. this can work more in Favour for the prosecution if they are seeking a long-term sentence. The cost is another disadvantage of the crown court and can be greater than the magistrate's court. This can be a big disadvantage for anyone who is not entitled to legal aid. Another disadvantage is that crown courts attract a lot of media attention which can be stressful for the defendant, and this can be difficult for the defendant to receive a fair trial and verdict from the jury

Advantages of magistrate's court

Magistrates court is less intimidating than the crown court. They do not wear clocks or wigs, which can make the defendant feel more at ease and less stressed. In magistrates you do not have a judge, you have a panel of 3 magistrates and no jury, they can be more considerate than judges. The trials in crown court tend to be faster than crown court which can be an advantage for the defendant if they are working or living a busy lifestyle. In magistrates court the maximum sentence u can give out is 6 months in prison for 1 single offence this can be an advantage for the defendant and a disadvantage for the prosecution

Disadvantages of magistrate's court

In magistrates' court, you will be represented by a solicitor, not a barrister, who does not have the expertise, which can be a disadvantage. another disadvantage is that your case will not be heard by a jury (members of the general public) this could go in the way of the prosecution

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Upon arrest Kim was not offered legal aid after some investigating, I think it's fair to say that under the legal aid, sentencing and punishment of offender's act 2012 section 13 advice and assistance for individuals in custody section (1) it states

“Initial advice and initial are to be available under this part to an individual who is arrested and held in custody at a police station”

This is worth looking more into as some of the P.A.C.E rules and policies have not been conducted properly.

After she was asked to have her fingerprints taken, Kim refused and the police officer's took her print by force, I have done some research and under the police and criminal evidence act 1984 section 61 paragraph (1) it says

“Except as provided by this section no person's fingerprints may be taken without the appropriate consent.”

The sentencing guidelines for section 47 is maximum 5 years we need to determine what category Kim will be put under. There are 3 categories ranging for a b and c with c being the lesser offence with it stating it was impulsive/spontaneous and short-lived assault. This assault can be classed as category 3 assault which is some level of physical injury.so if we were to look at the level of culpability chart this

should be a harm 3c assault where the starting point is a medium level community order ranging to 26 weeks (about 6 months) in custody. On the other hand a fine could be another option under the sentencing act 2020 125 impose of courts powers to impose fine and fix amount section 1

“The amount of any fine fixed by a court must be as in the opinion of the court reflex the seriousness of the offence”.

Kim has been been release on conditional bail under the bail act 1976

“Bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence”.

So, some things to note about this case can be tried in either magistrates court or crown. In crown court the maximum sentence will be 5 years if convicted in magistrates court the maximum sentence will be 6 months if convicted. Kim wishes to take a not guilty plea. This means that if she went to crown court, there would be a jury trial. I would suggest that magistrates would be the best step for kim and her not guilty plea. Plus, the magistrates can take into hand kims fingerprints we forced to be taken and she was not offered any type of legal aid even Tho she is entitled to this due to her income. If she took a not guilty plea, this would lessen her sentence by 3rd of the penalty. I think the magistrates will consider that her auntie has passed away, this does not exclude the fact that she attacked a human and left bruising on the cheek and take into consideration the p.a.c.e policy's i have explained previously. With this case was can clearly see the mens rea and actus reus of this situation and there is no break in the chain.

Reference list

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