

IN THE FALKLAND ISLANDS MAGISTRATES COURT

THE QUEEN -v- DAVID MORRIS

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DIRECTIONS IN LAW  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT &  
VERDICT

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*Section A: the law*

1. This is a criminal trial without a jury.
2. My function involves both identifying the legal and factual issues which arise; directing myself as to the relevant law, the burden and standard of proof; reminding myself of the important evidence on each side; deciding what evidence is reliable and what may be unreliable including an assessment of the credibility of the witnesses who gave evidence; making findings of fact, and giving my reasons for those findings; and reaching a verdict upon the charge which the defendant faces.
3. The burden of proof is upon the prosecution throughout. There is no burden of proof upon the defendant, who is presumed to be innocent unless and until the contrary is proved.
4. The standard of proof in this case, as in all criminal cases, is that the prosecution must satisfy me upon the evidence - the whole of the evidence - so that I am sure of guilt before I may convict the defendant. If I am sure it is my duty to find him guilty. If I am not sure it is my duty to find him not guilty.
5. The charge is a single count of doing an act tending and intended to pervert the course of public justice, in that on 28 March 2005 it is alleged that the defendant with intent to pervert the course of public justice, did an act which had a tendency to pervert the course of public justice, in that he brought pressure to bear on Inspector McGill to terminate a police enquiry

into an assault alleged to have been committed by Jason Morris. [Jason Morris (“Jason”) is accepted and admitted to be the son of this defendant, David Morris. The person whom Jason is alleged to have assaulted is his then partner, Patricia Parades Villa Blanca (“Patricia”).]

6. It is to be noted that the the allegation is limited to bringing pressure to bear upon Inspector McGill (“the Inspector”). The offence charged does not itself extend to nor involve the bringing of pressure to bear upon Patricia. In so far as there may be evidence of such pressure being brought to bear, before or after the conduct alleged in respect of the Inspector, it is relevant only as evidence, if I accept it, from which an inference may be drawn as to the defendant’s intention in acting in such way as I may find proved towards the Inspector.
7.
  - [a] The offence consists of the following essential ingredients: (1) acting or embarking upon a course of conduct; (2) which has a tendency to, and (3) is intended to pervert; (4) the course of public justice.
  - [b] (1) A positive act is required. Inaction is insufficient. (2) Proof of a single act will suffice, although several acts may be involved. (3) The act may amount to a successful or an unsuccessful attempt to pervert justice. The actual result, whether positive or negative, is irrelevant.
  - [c] The defendant is and was at all material times the most senior police officer in the Royal Falkland Islands Police (“the RFIP”). Mere failure on the part of a police officer to pursue a matter with a view to prosecution is not necessarily an offence. The prosecution do not put the case in that way. The case put is that he wrongly brought pressure to bear on a senior officer to terminate a current enquiry.
  - [d] A person meddles with the course of justice at his peril. However proper the end, the means used must not be improper. Even if the intention of a person who (for example) meddles with a witness is to prevent perjury and injustice, he commits the offence if he meddles by unlawful means. Pressure which may be acceptable or proper between individuals of equal status may be unacceptable and improper if the person exercising pressure is in authority over another.

- [e] To establish a tendency the prosecution do not have to establish that the tendency or possibility in fact materialised: but there must be at least a possibility that what the defendant has done “without more” might lead to injustice.
  - [f] A “course of justice” must be proved to have been “embarked upon.” This does not mean that proceedings must have been begun. Investigations which could or might lead to proceedings amount to a course of justice. Conduct which relates to potential judicial proceedings which have not been instituted but which are within the contemplation of the person whose conduct is designed to affect the outcome of them - or of whether they are ever instituted at all - will be conduct which may both be intended to pervert the course of justice and also have that tendency.
  - [g] The reluctance of a victim of an alleged criminal offence such as Patricia to be involved in proceedings or to give evidence at a trial, or for criminal proceedings to be brought against the perpetrator at all, is irrelevant to the need for an investigation to be begun into the question of whether an offence has been committed. Even if a police investigation establishes that no criminal offence has been committed, the enquiry is still part of the administration of justice, and thus of the course of public justice.
8. I must not speculate regarding the evidence of witnesses who have not been called such as Patricia or Jason, and I do not do so.
  9. Good character: the defendant is of good character. His evidence is more worthy of respect for that reason, and he is also able to claim that he has no propensity to commit any offence for that reason.

*Section B: the facts*

10. The defendant is and was at all material times a police officer. He was also at the time of the alleged offence the most senior police officer in the Royal Falkland Islands Police (“the RFIP”) in the rank of Superintendent. He has been a member of the RFIP for over twenty years. It is almost unnecessary to add, in the light of those facts, that he is a man of good character, with no convictions or cautions, but it is an important matter to which I have regard both as a consideration, first of all, that it would have been out of character for him to commit any criminal offence, or, putting it another way, that he had no propensity to commit an offence of this or any kind. Secondly, his good character is a matter which I should, and do, have regard to in assessing the weight which I give to his evidence: he is a man of good character whose word deserves all the respect which such a man’s word should have.

*The principal issue in the case*

11. The prosecution allege that at a meeting on 28 March 2005 the defendant brought pressure to bear upon his subordinate officer, Inspector McGill, (“the Inspector”) to terminate a police enquiry which the Inspector had authorised into an allegation of assault by Jason, the defendant’s son, upon his partner, Patricia.
12. The defendant accepts that the meeting took place, and that he had a heated discussion with the Inspector, but denies that he brought pressure to bear to terminate the enquiry. (At the outset I was informed that there was a secondary issue, which was foreshadowed in a Defence Case Statement, that someone who was not identified further than being in the Government of the Falkland Islands was effectively behind the bringing of proceedings against the defendant in order to be rid of him and to deprive him of his pension rights. This allegation in particular has not been pursued in evidence, nor has any general allegation of *mala fides* - bad faith - been pursued so far as the bringing of the prosecution is concerned.)
13. Various subsidiary issues of fact arise, in particular over the following matters:

- (1) what exactly was said at the meeting in the Inspector's office to the Inspector about his conduct and the investigation;
- (2) what was said at that meeting about the only exhibit in the case, a formal printed RFIP "Domestic Violence Policy" (Exhibit LSM 7 - referred to hereafter as "the FDVP") and its relevance to the defendant's position;
- (3) what was said at that meeting about the conduct of two sergeants in the RFIP.

*The evidence - a summary*

*Inspector McGill*

14. Inspector McGill gave evidence that he was at all material times the second-in-command of the RFIP. He had known the defendant for many years: in fact since he had first joined the RFIP twenty-one years previously, and the defendant had been his direct superior for four years or so before this incident occurred.
15. On Monday 28 March 2005 he was on duty in the police station in Stanley when he was informed that a report had been received from a nearby hotel, the Malvina House Hotel, ("the hotel") that Patricia, who was a hotel employee, had been assaulted by the defendant's son, Jason. The Inspector knew both Patricia and Jason. The inspector was the author of the FDVP which had been published in October 2002, and its terms were known throughout the force - in particular by the defendant, who, as chief officer had originally taken the FDVP for approval by the Falkland Islands Police Committee.
16. The FDVP has a number of passages which are said to be of some relevance to this case. Where passages below appear in bold type, this reflects the original exhibit. The Inspector referred in particular to the definition of domestic violence at page 1:

"Domestic violence is defined as any violence between current or former partners in an intimate relationship, whenever and wherever the violence occurs. The

violence may include physical, sexual, emotional or financial abuse.”

Also to the aims of the policy:

“The response of the RFIP to domestic violence offences has two principal aims:

- 3.1. The protection of victims in order that they ... are not left at continuing risk. If injuries are noted medical needs must be attended to or recorded, if the victim refuses to attend hospital.
- 3.2. Vigorous investigation to secure and preserve evidence and, where there is evidence of an offence, to arrest and charge the offender...

**This policy aims to give a clear statement of commitment, which every officer of the RFIP must have, to take firm action against those that commit domestic violence and the provision of caring support for those who suffer it.”**

Section 4 deals with investigation of domestic violence cases:

**“All incidents of domestic violence will be thoroughly investigated as a crime and a file prepared and submitted.”**

That general statement is followed by a number of bullet points including:

“However, the needs of the victim and their families must be paramount”

and,

“Every effort will be made to compile a file of evidence sufficient for a prosecution.”

Section 18 of the FDVP deals with the responsibilities of the Chief Police Officer. It provides that,

“The Chief Police Officer should establish and document lines of accountability for their [*sic*] domestic violence response. There must be a clear and direct line of supervision for officers dealing with domestic violence. This area of policing is stressful and help and support must be given to officers conducting this work.”

17. The Inspector’s evidence was that during the morning of the 28<sup>th</sup> March he was made aware of the report from the hotel. He decided, in accordance with the FDVP, to despatch an appropriate officer to investigate the matter, giving instructions to D.S. Butler to make arrangements.
18. Accordingly, he said, a female officer, PC Sarah Rowland, was sent to speak to Patricia. A young woman who was a witness in the case, Jennifer Sanchez, a Spanish-speaker, had agreed to act as interpreter, as Patricia, who is Chilean, has Spanish as her first language, and her English was not good.
19. The report which the Inspector received following the meeting between PC Sarah Rowland and Patricia was that the level of violence alleged by Patricia was significant: “Common assault at the top end of the scale, and possibly abh.”
20. The Inspector said that he resolved to deal with the matter in accordance with the FDVP. That involved obtaining a witness statement from the alleged victim. He understood from PC Sarah Rowland that Patricia was willing to make a witness statement, but she did not want any court action to be taken against Jason.
21. Up to that point, the Inspector said, he had not had any dealings with the defendant over the matter. He had seen and spoken to the defendant that day, but not about this subject.
22. DS Butler had brought the Inspector up to date over the investigation into Patricia’s complaint, and had left his office, when the defendant came into the Inspector’s office.

23. The defendant came in, said the Inspector, and closed the door, and sat in a chair opposite him. The Inspector was working at a personal computer compiling an urgent report concerning another matter.
24. The Inspector said that the defendant said, "What the fuck is going on?" making it clear that he was referring to Patricia's allegation. The Inspector said that he told the defendant what had happened and what he had asked the officers to investigate.
25. The Inspector said that the FDVP was mentioned during the conversation and that he reminded the defendant that it would give him protection if the incident were dealt with in accordance with the FDVP.
26. Despite this, the Inspector said, the defendant's voice was raised almost to shouting level, even though the two of them had been colleagues of twenty years' standing, and were in an enclosed office.
27. The Inspector said that the defendant said that "it was a family matter, and 'we' [RFIP] did not have to be involved."
28. In examination-in-chief the Inspector was asked what he interpreted that to mean. He said "I felt as though I was being required not to investigate the incident, or, rather, not to have it investigated."
29. The Inspector was asked what kind of language the defendant used and said that he was "not sure that he used profanities any further."
30. However, he said that the defendant spoke of the two sergeants - DS Butler whom the Inspector had put in charge of the investigation - and PS Whistler, who had some marginal involvement, as "those two bastards." The Inspector said "He seemed to take exception to those officers being involved in the investigation when [as he had said] the RFIP should not be involved." This was the only point in the four or five-minute exchange, the Inspector said, at which he, Inspector McGill, raised *his* voice. He said that he did so to defend the officers and to put across his point that they were acting on his orders. When the defendant left, the two sergeants came into the Inspector's office and said that they had heard some of what had been said.



31. Taking up matters as he had intended before the defendant's interruption, (see paragraph 11 above) the Inspector gave instructions that PC Rowland should return to see Patricia, and obtain her statement.
32. He later learned that Patricia was unwilling to provide a statement.
33. In the four years that the defendant had been his direct superior, he said, there had certainly been occasions when they had disagreed, but "never like this: this was out of the ordinary."
34. In cross-examination he agreed that investigating officers should always keep an open mind; that the FDVP applied equally to men who might be victims of domestic violence; and that there was no specific detail about the procedure to be adopted when an officer's family were involved - p. 7 paragraph 11 dealt only with situations where an officer might be the perpetrator of domestic violence.
35. The Inspector also agreed in cross-examination that he had made no note of the conversation with the defendant at the time, and that he remained friendly with the defendant after it, regularly socialising with him and entrusting him with looking after his house when he was abroad for some time later on. He had made no complaint to anyone, and the matter only came to light when he was asked about it by the officers from New Scotland Yard who were in charge of the enquiry which has led to these proceedings.
36. So far as the conversation with the defendant was concerned, he agreed that the defendant was angry when he came into his office and that he wanted to know what was going on. However, when it was put to him that Patricia did not want to make a statement, the Inspector said "I don't recall that." He agreed that the defendant's anger got worse because he had been kept out of the loop. He also agreed that the defendant had said that there were two sides to any story and that he had suggested that his son might have been assaulted by Patricia, but no enquiry was made of Jason because the enquiry was stopped.
37. He agreed that he had told the sergeants to carry on as normal with the investigation after the conversation with the defendant, so that the conversation had not in fact stopped it. It was stopped, he agreed, because he found out that Patricia did not want to make a statement. That information caused the investigation to stop.

38. In answer to the question, "The defendant did not at any time tell you to stop it?" He replied, "He said to me that it was a family matter, and the RFIP did not have to become involved."
39. The defendant had not told him directly to stop the investigation, and had not said "we shouldn't be involved." If he had had any "concerns," he agreed, he could have reported the matter to Crown Counsel or to the office of HM's Attorney-General, and he had not done so.
40. In re-examination he said that the defendant had not said anything to him at the point when they were in his office on the Monday afternoon which conveyed the information that he had already spoken to Patricia.
41. He was asked, "You agreed that you were not *instructed* by the defendant to terminate the investigation, how did you interpret what he did say?" His answer was "That we weren't to proceed with the whole process."
42. Asked why he had not made any complaint to Crown Counsel or to the Attorney-General's office, he said "I felt it was a decision which the defendant had made, and as my superior officer he was entitled to make it." He then added, "I felt disappointed, and uneasy about the whole incident, and I still do."

*Mr Carl Stroud*

43. Mr Carl Stroud, the hotel manager, gave evidence that Patricia had been a member of his staff last year (2005), and that he recalled seeing her on a day in March when she had facial injuries. He described seeing bruising to her face, swelling to her nose consistent with a break, and swelling under her eyes.
44. She was collected after about half an hour by the defendant. When asked whether the police had become aware of her injuries, he said that he could remember a police officer coming to the hotel on another day. He didn't know who had contacted the police.
45. In cross-examination he said that Patricia said she didn't want to report the incident. He had not been the person who had reported it. It was a day or so after he had seen Patricia with her injuries that the woman police officer came to the hotel, and he thought Patricia was at the hotel when she came.

*Jennifer Sanchez*

46. Jennifer Sanchez was a receptionist at the hotel at the time. In examination in chief she said that she had been with Patricia when PC Rowland spoke to her. That had been on Monday 28 March 2005. She said she had seen Patricia with some fresh facial injuries a few days before that. "She had bruises everywhere really." She had been at work at reception in the hotel when at 8.00 - 8.30 she saw Patricia. The main injuries she saw were facial bruises. Her nose was bleeding and she had tissue paper in her nose. Her eyes were bruised. She had bruises on her arms and on her back, but Jennifer Sanchez did not see the injury to the back until, shortly afterwards she went with Patricia to the hospital.
47. When they got back from the hospital Patricia decided to ring the defendant, whom Jennifer Sanchez knew at that time simply as "Jason's dad." He came to the hotel, she said, at about 10.30 - 11.00 when he came and picked them up and took them to his home: Jennifer Sanchez went with her to translate. There, in the presence of the defendant and his wife, Patricia said what had happened and Jennifer Sanchez translated what she said. Jennifer Sanchez said in evidence that Patricia told them that she and Jason had had an argument, and that Jason had started to push her in the kitchen at their home. She said she fell over and Jason had been kicking her and punching her. (Jennifer Sanchez confirmed that she had translated this into English.) "[the defendant] advised her & invited her to stay with them so that she did not have to go back to Jason's house. She said to them that she was not going to report him to the police, and Mr Morris was happy with that. She didn't want to get any more trouble." She said "I remember vaguely him saying 'I thank you for not reporting my son. I know that what he has done is wrong.'"
48. Jennifer Sanchez then said that she went with Patricia to Jason's house to collect clothes. Jason was still in bed and Jennifer Sanchez did not see him.
49. A few days later a policewoman, "Sarah," came to the hotel to see Patricia and Jennifer Sanchez again translated. She said that Sarah said Patricia could go to the police station and Patricia said she didn't want to go. Sarah said someone there spoke Spanish and Patricia said "I don't want to make a complaint." Sarah had said "You don't have to make a complaint, you can just make a statement." At that, Patricia had said "yes" and told Sarah that she would go to the station. Jennifer Sanchez said she had not known the defendant's job until later on when Patricia had told her.

50. In cross-examination she was asked "Is it fair to say that Patricia didn't want the police involved?" and replied, "Yes. She did say she would go to the police station, but when Sarah left she said she didn't want to go."
51. She agreed that at his home when talking to Patricia the defendant had said "Are you sure you don't want to get the police involved? Are you sure you don't want to make a complaint."
52. In re-examination Jennifer Sanchez said that when the defendant had come to the hotel on the Saturday Patricia had told him the circumstances in which Jason had assaulted her: that Jason had been drinking all night and he had had a female friend in the house who had left quite late: Patricia had come down to see Jason and they had started arguing and that was when Jason got aggressive and started hitting her.
53. It was not Jennifer Sanchez who called the police to inform them. I found Jennifer Sanchez a very impressive and reliable witness whose evidence was of a high standard.

*Sarah Rowland*

54. Sarah Rowland was a full-time member of the RFIP in the rank of constable until 29 March 2005. She then became a part-time reserve member of the force. On 28 March she was on duty and was instructed to deal with a suspected domestic violence case by Sgt Whistler. Patricia was the alleged victim and Jason was the alleged perpetrator. Sarah Rowland knew that Jason was the defendant's son.
55. When she went to the hotel PC Sarah Rowland saw Patricia. Asked if she saw any injuries she said "I recall 2 black eyes." She said that Patricia agreed to make a statement, but did not want to take the matter further. PC Rowland said she mentioned the FDVP, and said that she could get another woman officer - PC Reid - who spoke Spanish if that would make it easier for Patricia. She said Patricia agreed to do that and she went back to the station to make arrangements.

*Sgt. Whistler*

56. Police Sgt. Whistler said that on 28 March 2005 he was on duty at the station and was informed of an allegation of domestic violence which had

been made by a girl at the hotel. He knew the alleged perpetrator. DS Butler asked him to get a constable to investigate, and so he sent PC Sarah Rowland. The WPC returned before lunch and told him that she had arranged to return and take the statement after lunch. Some time after lunch he became aware that Supt Morris, the defendant, had visited the Inspector's office because he heard him shouting in the Inspector's office.

57. Sgt. Whistler said that the defendant had a "very aggressive and very angry tone of voice." The Inspector raised his voice at times, and the defendant shouted back at him. He heard the defendant say "Fucking Len" (Len is the Inspector's first name) and also heard him say "Those two fucking sergeants don't know what they're doing." He had never heard the defendant address a colleague at that volume or in that tone before. He heard the defendant leave.
58. Sgt. Whistler then saw the Inspector, whom he described as "visibly shaken."
59. He said that the Inspector, Sgt Butler and himself had agreed earlier that day that the defendant should not be informed of the report from the hotel, as his son was said to be involved.
60. In cross-examination he agreed that the Inspector had then said "the investigation will carry on as normal."
61. In November 2005 the defendant was interviewed by two officers from the Directorate of Professional Standards at New Scotland Yard, London, DCS Bussey and DS John.
62. Transcripts of those interviews should be read with the text of this decision, and I shall only make references to a few passages. At page 2 of the first interview he said that on two occasions he had asked Patricia if she wanted to make a formal complaint and that another officer would be brought in, but that she was adamant that she did not want to make a complaint. He had made no documentary record of that, which was he said "remiss" of him. At page 3 he said that "The domestic violence policy was followed up later because the Inspector sent ... WPC Rowland ... down to see her to see if she wanted to make a complaint." He said that Patricia had contacted him because she had been told that she had to make a statement and she didn't want to make a statement. That was why he went to see the Inspector. The Inspector had said that he had sent the constable to see

Patricia “because he was following the FDVP. I said ‘Fine.’” He then asked the Inspector if he had sent the constable to see Jason because he had two black eyes as well, and FDVP was to protect any party in a domestic violence situation. At p. 5 he agreed that his subordinate officers should not deal with issues relating to their own families, but that meant “investigations” and (at p. 6) he wasn’t dealing with it as a police officer.

63. In a second interview, at p. 4, he agreed when asked whether Patricia and her circumstances fell firmly within the FDVP. He was then asked whether his actions as Chief Police Officer were in line with the FDVP. His reply was “Well an officer was sent down to investigate it.”
64. At pp 5-6 he was asked whether the discussion he had had with the Inspector was a “balanced discussion.” He said “Yes. We were both understanding what each other was saying.” It was not a “telling-off”. Q. You can ask in a nice calm voice ... or one party can be aggressive and start to shout. ... Which if either of them categories would it fall into? A. Well it wasn’t shouting, we were just having a normal conversation.”
65. At pp. 11-12 he was asked about Patricia’s injuries, and said that when he discovered them he was “disgusted with Jason”. Asked what degree of assault the injuries appeared to be consistent with, he said “Might be up on a GBH.”
66. At p. 16 and at p. 20 he said that he had tried to get Patricia to make a complaint.
67. At p. 24 he admitted that if Jason had gone to court he would have “gone inside” for 2, 3, or 6 months, but at p. 25 that that was not the reason for the actions he had taken.
68. In a third interview the Inspector’s account of his coming into his office and beginning the conversation with the words “What the fuck is going on?” was put to him, and he said he could not remember saying that, but admitted that he was angry because the Inspector had sent someone to see Patricia without consulting him. At p. 2 he said that the Inspector knew that he, the defendant had been down to see Patricia already. At page 4 he agreed that he had been the first police officer to be informed of Patricia’s allegation. At p. 8 he said he was quite prepared to say that he had made an error of judgment, but it was not his intention to brush the matter under the carpet.

69. At p. 9 of the third interview transcript the Inspector's account of part of their conversation on the 28<sup>th</sup> was put to him: "He said, 'there are 2 sides to this story. He [Jason] has been assaulted. This is a family matter. We [RFIP] do not have to become involved.'" His reply in interview was "I never said that." Asked at p. 11 if he did not accept that if it *was* said, it would be a "a strong statement from the Chief of Police" he replied, "A very strong one if it was said, and I don't recall saying that at all."
70. Asked at p. 12 whether he could remember the Inspector saying to him that he, the defendant "needed to rely on the protection of the job being done, otherwise this could open him up to allegations of interference being made," he replied, "Yeah, I won't comment on that because I don't remember him saying that." He described the suggestion that he had referred to the sergeants as "bastards" as "Rubbish... Absolute rubbish." (p.13)
71. At p. 14 he said that the reason he had gone down to see Patricia "the second time was because she was told ... that she had to make a statement." Q. "But now are you going down there on that second occasion as the Chief of Police or as the father? Bearing in mind you have just had a blazing row with your Inspector? A. Well, I went down to see what she wanted." He later said (p. 15) that Patricia got "quite hysterical after WPC Rowland had been down to see her."
72. At the conclusion of that interview (p. 20) he said "I think that there's a difference between an abuse of authority and making ... an error of judgment ... I think I made a mistake by not backing off and allowing someone else to deal with that."
73. DCS Bussey confirmed that the defendant is a man of entirely good character.

#### *The defendant*

74. Mr Morris gave evidence in his own defence. He was under no obligation to do so. His evidence is no way tainted because he is the subject of the charge: his evidence is just as much to be respected as that of any other witness. As he is on trial, however, he is subject to a degree of stress to which other witnesses are not exposed, and I make allowance for that in his favour when considering cross-examination in particular.

75. He said that on Saturday 26 March 2005 he received a phone call from Patricia who was at the hotel. She said that she had had a fight with Jason and that “she wanted to see me.”
76. He met Patricia and Jennifer Sanchez at the hotel foyer. Patricia was distressed. She had an injury to her nose, bruising under her eyes - black eyes just beginning to come out. He said “I asked her what had happened and she said that she and Jason had had a fight. I asked her if she wanted to make a complaint to the police and she said no. I can’t remember completely whether, when I got there, she said she didn’t want the police involved or whether I asked her, but the first thing I did was to confirm whether she wanted to make a complaint, and she was very adamant that she did not want the police involved. I asked her what she wanted and she said that she did not want to stay at the hotel on her own and I said my wife could make up the spare bedroom for her and she could come to my house.”
77. She came with Jennifer Sanchez who interpreted. “My wife was there and I asked again “Are you very sure that you don’t want to make a complaint to the police, because if you do, I would have to back off and call another officer to deal with the situation. Once again she said “no.” She was very adamant she did not want the police involved.
78. The defendant then referred to the trip to Jason’s house to collect clothes.
79. Patricia stayed that week-end with his wife and himself.
80. On Monday 28 March 2005, he said, his wife rang him at work, where he was in uniform, saying that she had had a call from Patricia who sounded distressed. Patricia was under the impression that she had to go to the police station, he said. Asked by Mr Treble for the defence how he felt when he received that call, he said “I didn’t feel too bad at that time, but when I went down to see her at the hotel, and found her in the kitchen, she was upset: not as bad as she had been on Saturday. I asked her what was going on and she said that the police had been to see her and she was under the impression that I had sent them and she was told that she had to go to the station that night and she did not wish to. I said “you don’t have to make a statement if you don’t want to, you can do, but you don’t have to. She said she didn’t want to.” I said I’d speak to the Inspector to find out what was going on. I left the hotel and went back to my office.



81. He said that he then went to see the Inspector. He said he was in an angry mood because whether knowingly or unknowingly an officer had left Patricia under the impression that she had to make a statement whether she wished to do so or not. I went into the Inspector's office and said "Do you know anything about police visiting Patricia?" He said that he'd had an allegation of assault upon Patricia and that he had initiated the FDVP. When asked by his own counsel to describe his own demeanour, the defendant said "I was still angry because of the impression that Patricia had been left with. Q. How did you feel when the FDVP was mentioned? A. I felt fine. I was still angry because Patricia had been left with the impression that she had no choice but I told him I'd seen Patricia on Saturday and again that day, the Monday, and on both occasions she had been very adamant that she didn't want any police involvement. He said that he knew I'd been to see Patricia but that I was too close." [*There is therefore a complete conflict of primary fact between that evidence and the evidence of the Inspector - see paragraph 31 above.*]
82. It was this in particular, the defendant said, that made him angry because he knew he had been to see Patricia and had not trusted him to give her the right advice, "and, also, I realised he was deliberately keeping me out of the loop, calling my integrity into question and that made me very angry. Q. Did you show you were angry? A. Yes. I did raise my voice and shout and show I was angry."
83. He said that he asked whether an officer had been sent to see Jason, who also had black eyes. There were two sides to the story. He agreed that the discussion with the Inspector was "heated" but there was no way that he intended to pervert the course of justice.
84. In cross-examination he agreed that Patricia certainly looked as if she had been the victim of serious domestic violence. He knew the hospital suspected a broken nose, but he did not recall her saying that she had been punched and kicked by Jason. He repeated this. At that stage I reminded him of the unchallenged evidence of Jennifer Sanchez who said she had translated precisely that allegation to himself and his wife. Cross-examining counsel asked him "Q. That's the truth of it? A. Not as I recall."
85. "Q. It was obvious to you in those circumstances that the FDVP should be adhered to? A. If the person wasn't willing to make a statement, then, no."

86. He said he had not documented Patricia's injuries because he went to see her as a father-figure and did not want to betray her trust. He said it was not the truth that he did not want an investigation of the matter. "Q. Did you think your decision not to document the injuries was appropriate? A. In the circumstances, yes. Q. Then why say it had been "remiss" of you? A. What was remiss was not informing the Inspector." [*But of course he had said he had told the inspector he had seen Patricia not just once, but twice about the matter - see para 72.*]
87. He agreed that he could not properly have investigated the matter himself, and that he had not phoned any colleague to do so "because I was respecting Patricia's wishes." I asked him whether it had occurred to him to advise Patricia to have independent advice, but he said that she was in such a distressed state, and they were the only "family" she had on the island that "rightly or wrongly" he took her home. He added "I have a constitutional right to a family life and I'm entitled to act as a father figure."
88. When asked in cross-examination what had made him so angry when he went into the Inspector's office, he said that Patricia was adamant "that she did not want the police involved and it had been reported to me that she was being told she had no choice." I asked whether the defendant did not have confidence in his subordinate officers to investigate the matter properly and professionally. He said he did have confidence in them, but thought "she was being forced into making a statement."
89. Invited to comment on the second interview at p. 10, "What the fuck is going on?" the defendant said "I never said that. I have no recollection of saying that." I asked whether it was possible that he might have said it: "No. I remember saying 'Len, do you know anything about police going to question Patricia at the hotel?' So, no, I didn't say it."
90. He agreed in cross-examination that he went to see the Inspector as "his boss".
91. He could not remember saying anything rude about the two sergeants, although in re-examination he conceded he might have said something in a heated discussion.
92. He said that he was not trying to get the Inspector to stop the investigation.

*Closing submissions and the issues in the case*

93. In his concluding submissions defence counsel made the point that the crucial evidence consisted in what was said in the Inspector's office. The lapse of time made precise recollection impossible. There was no contemporaneous note. The crucial witnesses were the Inspector, the defendant and (to a lesser degree) Sgt. Whistler. Honest witnesses may have different recollections. The prosecution case hinged on "it's a family matter, we don't have to be involved." The defendant gave no direct instruction to the Inspector to terminate the investigation. Indeed, the Inspector told the sergeants to carry on as normal. The Inspector made no complaint as might have been expected if he had real concerns. No inference about pressure on Patricia could properly be drawn as she was saying from the beginning that she did not want the police involved: Jennifer Sanchez confirmed this. Non-compliance with the FDVP was not an offence. The defendant is a man of good character and I should accept his evidence as truthful. Nor is he the sort of man who would commit an offence like this. He was emotionally involved on both the Saturday and the Monday, and if he were angry he may have sworn. The phrase "we don't have to be involved" (if it was used) was in the nature of a rhetorical question, which the Inspector may have misunderstood.
94. Once Patricia had decided on the Monday not to make a statement, defence counsel submitted further, the "course of justice" had come to an end, and there could be no "tendency" in anything the defendant said or did thereafter to pervert it.

*Conclusions*

95. Where the Inspector's evidence and the defendant's evidence are in conflict, I am satisfied so as to be sure that the Inspector's account is reliable, and the defendant's unreliable. My reasons follow.
96. The Inspector impressed me generally as a careful, honest, and accurate witness, who gave his evidence without any motive other than to be candid, fair and to tell the truth. He was uncomfortable in having to give evidence against a man who had been a friend, professional colleague for many years and his superior officer for four years, whom he still appeared to regard as a friend. His demeanour and attitude may be illustrated by reference to paragraph 33 above: Asked why he had not made any complaint to Crown

Counsel or to the Attorney-General's office, he said - ruefully and self-critically, as it appeared to me - "I felt it was a decision which the defendant had made, and as my superior officer he was entitled to make it." He then added, "I felt disappointed, and uneasy about the whole incident, and I still do." He was plainly a witness who took no pleasure whatever in having to tell the truth about a matter which may have caused much anxiety, but which he did not shrink from dealing with square on when required to do so, whatever his private feelings.

97. On particular matters, too, the Inspector's evidence was entirely credible and consistent with other evidence from independent sources. For example, the extraordinary conduct of the defendant, as a chief officer of police, in entering his office shouting "What the fuck's going on?" is to some extent borne out by Sgt. Whistler's evidence both as to hearing the obscene language about the Inspector, and about himself and DS Butler, and by the sergeant's evidence as to how shocked the Inspector looked when the defendant had left. For that reason I reject the defendant's account in evidence on both these aspects.
98. In re-examination the Inspector said that the defendant had not said anything to him at the point when they were in his office on the Monday afternoon which conveyed the information that he had already spoken to Patricia. I accept that evidence. That would have been a significant matter which the Inspector would have remembered. He already had (I am satisfied) very real concerns over the propriety of any personal involvement by the defendant - demonstrated by his decision to keep the defendant "out of the loop" *and* by his warning to the defendant about the protection of the FDVP and the risk of his appearing to interfere. References to the defendant having seen Patricia not just once but twice would have been highly significant matters for him. I reject the defendant's evidence, which is in complete conflict with that: " Q. How did you feel when the FDVP was mentioned? A. I felt fine. I was still angry because Patricia had been left with the impression that she had no choice but I told him I'd seen Patricia on Saturday and again that day, the Monday, and on both occasions she had been very adamant that she didn't want any police involvement. He said that he knew I'd been to see Patricia but that I was too close."

99. Had the defendant simply become too emotionally involved for his own good, and become temporarily blinded to professional considerations of propriety and appropriate detachment and objectivity, he would, I am sure, have come to his senses straightaway when the Inspector mentioned the protection the FDVP afforded him, and the need to be seen not to be interfering. If anything, the reference was something which appeared to make him even more annoyed. That is not consistent with an innocent over-emotional reaction.
100. I found the defendant, by contrast with the Inspector, despite his previous good character, evasive in dealing with many matters and less than truthful upon a number of significant matters. In interview with the Scotland Yard officers he gave a misleading impression of the nature of the conversation with the Inspector in his office, and was economical with the truth in a way which was not consistent with having dealt with the Inspector as properly as he was claiming to have done.
101. His attitude towards Patricia was, I find, most accurately reflected by Jennifer Sanchez's evidence that he thanked her for not wanting to involve the police in what might have otherwise have become a nightmare for him as a father - involving a serious charge of assault against his son and a possibly substantial immediate custodial sentence. He had himself observed the injuries Patricia had. He had heard her account as Jennifer Sanchez translated it of Jason having kicked and punched her without comment or challenge. It must have been plain to him that there was a very clear prima facie case of assault against his son.
102. I do not accept that he behaved in a detached manner with Patricia, to the point of virtually inviting her to go to the police, as that would have been wholly inconsistent with his conduct as I find it to have been on Monday 28<sup>th</sup> March 2005 when he behaved so angrily in the Inspector's office. However, I am not satisfied so as to be sure that the defendant on 28<sup>th</sup> March 2005 went to Patricia and persuaded her to change her mind about giving a statement as she had agreed with PC Sarah Rowland.
103. I do not accept that the reason for his anger was annoyance at Patricia having been told she had to make a statement. The evidence of Jennifer Sanchez, which was not challenged and which I accept, was that PC Sarah Rowland had explained to her that she did not have to make a complaint but was asking her to make a statement. In my view it was anger at the revelation of something which he had hoped to keep quiet, and the risk of

that being properly and professionally investigated which prompted the extraordinary reaction of the defendant.

104. The defendant was well aware of the FDVP. His actions on both the Saturday and the Monday were not merely squarely at odds with its provisions, they were wholly out of character for any senior - or for that matter junior - police officer, who would be bound to recognise the need for independent investigation of matters involving a member of their family. I fully accept that breach of the FDVP is not tantamount to the offence charged, but the evidence of the defendant's conduct in conflict with its provisions is evidence which in my view is only consistent with guilt, not with innocence.
105. Upon the issue of what the defendant said to the Inspector regarding the involvement of the police, the Inspector's evidence was "He said to me that it was a family matter, and the RFIP did not have to become involved." I accept that evidence. It was something which plainly caused the Inspector serious discomfiture, and no doubt contributed to the shocked appearance Sgt. Whistler noticed moments later. That is entirely consistent with the unchallenged evidence that despite it, the Inspector told the sergeants to carry on as normal.
106. In my view the only proper verdict upon the whole of the evidence is one of guilty. The defendant undoubtedly did an act which had a tendency to pervert the course of public justice - bringing pressure to bear upon the Inspector to terminate a then current investigation into the conduct of Jason Morris - with the intention of perverting the course of public justice.
107. I reject the submission that the course of justice had, in effect, run its course with any decision which Patricia may have made that day not to make a statement. Independent enquiries could still have continued. Jason, as prosecuting counsel observed, could have been interviewed and may have made admissions which could have constituted adequate material for a prosecution. Patricia might well have changed her mind the next day or the next week.

Patrick Curran QC,  
Acting Senior Magistrate,  
Stanley,  
Falkland Islands.



9<sup>th</sup> November 2006

**IN THE FALKLAND ISLANDS MAGISTRATES' COURT**

**MC/CRIM/12/06**

**THE QUEEN**

**v**

**DAVID MORRIS**

**DEFENDANT**

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**SENTENCE**

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1. David Morris, as you know, on your own application, and with the consent of yourself and of the Crown, an oral hearing before me for the adjourned sentence in this case has been dispensed with, and the matter has been dealt with on the papers, [and sentence will be pronounced by the Senior Magistrate, who will read these sentencing remarks to you, and pronounce the sentence of the court, and she will herself deal with any ancillary matters which may arise ex improviso.]
2. I have read each and every one of the bundle of documents containing the pre-sentence report upon you, medical reports, letters as to character, a certificate of discharge from the Royal Marines and the Governor's letter of commendation dated 16<sup>th</sup> March 1993.
3. I have also considered the helpful written submissions in mitigation made on your behalf.
4. I am told that you now accept that in acting as you did you made an error of judgment, but that you were unaware that you were committing an offence. On the evidence it was absolutely clear that you were deliberately interfering with your subordinates' attempts to carry out their duties. Inspector McGill, who was plainly very embarrassed at the time by your conduct, effectively told you that, then and there. Your aggressive behaviour to him may well have been the product of a misguided attempt to protect a member of your family from investigation, but the purpose of the aggression and of the bad language which you used was quite obviously to be overbearing and make him call off the very proper enquiries he had instigated. Even if your sole purpose had been in some way to act protectively to your son's partner (and I did not accept on the evidence that it was so limited) you as an

experienced chief officer knew full well that such proper police enquiries are to be made independently of the wishes of alleged victims. It was wholly wrong of you, knowing the victim as you did and as the father of the alleged perpetrator, to attempt to bring your influence to bear in the slightest way. Had you, after a few minutes' reflection, come to your senses and made it clear to the Inspector that you realised the gravity of your misconduct, and expressly withdrawn your abusive remarks, making it clear that the investigation should take its proper course without reference to you in any way, your conduct then might possibly have been regarded as justifying only disciplinary proceedings. But you did not do so.

5. You are not to be punished for doing anything more than your conduct at the police station. In particular, as I made clear in giving my findings of fact, I was not satisfied that you had taken any further step in further contacting the complainant, Patricia, so as to cause her to decline to make the statement which she had agreed to make to PC Rowlands that morning. I am told by your advocate that now, after considering the judgment given at the conclusion of the trial, you are "better able to reflect, and bitterly regret" your actions on the 28<sup>th</sup> day of March 2005. I am told that you yourself now realise that your words and actions on that day,

"could have been and were interpreted by Inspector McGill as undue pressure in an attempt to persuade Inspector McGill to take a certain course of action, albeit as the Court heard in evidence, Inspector McGill was not swayed from his desire and intention to pursue the case."

But the effect of what you said upon Inspector McGill was something which you must have known at the time. Of course I accept that you acted impulsively, and did not set out on a carefully thought-out plan to cause justice to be perverted. You lost your head as a result of the acute anxiety you had that your son might be prosecuted for assault at least and possibly for inflicting grievous bodily harm. I do not in any way increase the sentence to reflect your plea, but nor are you entitled to any credit for pleading guilty.

6. I accept your advocate's submission that your conduct was not motivated by malice, dishonesty, or for any financial gain, and was the action of a dedicated family man making a woefully bad mistake in a misguided attempt to prevent facts of which he was well aware becoming the subject of official enquiries. But that same family man was the chief officer who was the lawful superior of those charged with making such enquiries. As I have previously observed, even a junior officer would have realised the absolute necessity to remove himself or herself personally from any police enquiry into the



conduct of a member of his or her family. Not only did you not remove yourself, you actively attempted to influence your subordinates improperly.

7. The Falkland Islands are home to a small but remarkable community. As much as determined self-reliance is one of its characteristics, so is the special need for trust in other members of the community. Trust in those charged with official business in the Islands is therefore all the more important. Prosecutions of police officers and others concerned with the administration of justice are fortunately rare both in the United Kingdom and in other British jurisdictions. It is to be hoped that they will remain rare through the realisation that the slightest attempt at interference with the course of public justice, especially by one whose position is charged with an important part of its conduct, will have the direst consequences.
8. It would however be quite unjust to disregard the service you have done over many years both to the Crown and to the community. You have lived in the Islands for over twenty-five years, and as the letters of those who have written to support you quite clearly show, you were, and to many still are, a highly respected man. I accept that your devoted wife (whose courage appears to have been quite admirable in standing by you so resolutely) and your children have been profoundly affected and pained by your arrest, prosecution and conviction. The period from your arrest until the trial was, I accept, itself a profoundly punishing experience. In that regard, my attention is invited to parts of Dr McInerney's report dated 18<sup>th</sup> December 2006 as to what was discussed by your wife and yourself at that time, which indicates the depths of despair to which you were both driven. I understand that very recently your wife herself has been admitted to hospital after suffering what can only be described as a break-down. I have also noted with concern the other very worrying matters affecting her and other members of the family, which are set out in your advocate's submissions and which do not need to be detailed in public.
9. You served your country with courage and distinction as a Royal Marine and as a police officer, with only this lapse from exemplary conduct. That is rightly urged on your behalf and entirely accepted as being relevant to sentence. Your discharge from the Royal Marines dated 12<sup>th</sup> January 1983 was "Exemplary" – the highest distinction possible. Further, your conduct in the Royal Falkland Islands Police Force until the date of this offence was also very good. I note the commendation made by the then Governor on 16<sup>th</sup> March 1993. I have noted and largely accept your predecessor's assessment of you in his letter. Your conduct normally exhibited sound judgment, common sense, and good leadership. This offence was utterly and completely out of character. Moreover, I take the view that it is highly

unlikely that there will ever be any occasion in the future when you will commit any serious offence.

10. The effects of conviction upon you have already been dire, and in many ways you have punished yourself by your fall from grace far more severely than any court could punish you. Your resignation from the Police Force recognised the inevitable consequence of conviction. With that disgrace and loss of status came also a considerable reduction in pension entitlement both by way of lump sum and annual income, details of which I have been supplied with.
11. Your mental and physical health has been gravely affected – I have read Dr McInerney’s psychiatric report and Dr Elsby’s medical report. I propose to say nothing in detail about those confidential matters save that I take them fully into account.
12. Following conviction you were granted bail by the Court, which had before it no evidence of any mental health issue whatsoever, but took an overdose of antidepressant medication on 9<sup>th</sup> November 2006, to the great alarm of your wife, who discovered you in an unconscious condition. You were taken to hospital on the morning of 10<sup>th</sup> November 2006, and bail was withdrawn on 24<sup>th</sup> November 2006. You have therefore notionally been in custody for over two months, and that period will be treated as time on remand in custody awaiting sentence, even though you have been detained not in prison but at King Edward VII Memorial Hospital. This would equate to a prison sentence in the Falkland Islands of slightly more than three months.
13. Your advocate makes the concession, and says that you yourself accept, that the offence of which you have been convicted is serious and that therefore the court must consider imposing an immediate custodial sentence. He points out that the maximum sentence in the Falkland Islands for the offence is two years’ imprisonment, and not a sentence of statutorily-unlimited length, as in England and Wales.

By the Criminal Justice Ordinance 1989 as amended, section 31(1) –

*“No Court shall pass a sentence of imprisonment on a person of or over 21 years of age on whom such a sentence has not previously been passed by a Court in the Falkland Islands unless the Court is of opinion that no other method of dealing with him is appropriate and for the purpose of determining whether any other method of dealing with any such person is appropriate the Court shall obtain and consider information about the circumstances and shall take into account any information before the Court which is relevant to his character and physical and mental condition.”*

14. I do consider that the offence you committed is one which is so serious that in your case, taking into account all I have seen and heard as to circumstances, no method of dealing with you other than a sentence of imprisonment is appropriate. But yours is an exceptional case in many respects. In my view the fact of your prosecution and conviction and the disastrous personal consequences which have followed have done all that needed to be done to remedy the loss of public confidence in the police force caused by your conduct. I have come to the conclusion that the time has come to end the continuing punishment which you are suffering in formal detention.
15. The appropriate sentence having regard to all the circumstances, taking into account the maximum sentence available for this offence in the Falklands, is one of six months' imprisonment. That sentence will be suspended for a period of 12 months. That means that if you commit no further offence punishable with imprisonment within 12 months of today, you will not be required to serve such part of that sentence as has not already been served. In the very unlikely event that you do commit an offence you will be liable to be required to serve this sentence in addition to any other sentence.
16. The prosecution make no application for costs and there will therefore be no order as to costs.
17. The effect of the sentence is that your formal detention in hospital will cease. The need for you to receive further treatment is a matter for your medical advisers.
18. I am grateful to the court staff and to the defence solicitors for their very considerable assistance.

Patrick Curran QC

(Acting Senior Magistrate)

London

2 February 2007

**Handed down in open court in Stanley by Senior Magistrate Clare Faulds on 5<sup>th</sup> February, 2007**