

JERSEY / JUDGMENT

AG v Caboz [2003] JRC 218 (28 November 2003)

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JUDGMENT

THE COMMISSIONER: 1. The defendant stood trial on 23 rd September, 2003 on two separate counts. The first was one of grave and criminal assault allegedly committed by him on his wife on 16 th March, 2002; the second was one of attempted murder of his wife one month later on 18 th April, 2002. Although separate, the two incidents were alleged to be part of a continuous deteriorating matrimonial relationship. 2. The trial lasted eight days. The defendant was found guilty of attempted murder but not guilty of grave and criminal assault. In both cases the Jury was divided. The division on the grave and criminal assault was 7 to 5 for an acquittal. The allegation of grave and criminal assault - and there was no independent witness to what actually occurred - was that the defendant had brutally forced the complainant into the boot of his car but she had managed to extricate herself. 3. The defendant, who did not give evidence, had a quite different version of events. It was not denied, and could not be denied, that the complainant suffered injuries. But the defendant gave an explanation for those injuries and on 1 st August, 2002, on that basis, offered to plead guilty to common assault. That plea was not acceptable to the Crown which proceeded to indict and argue on the basis of grave and criminal assault. 4. I have no way of knowing how the Jury reached its conclusion but it may have been swayed by the fact that the complainant had told the police that she had never been inside the blue Fiesta, which was the car in question. A witness, the defendant's cousin, gave evidence during the trial that she had seen the defendant with the complainant in the car on a specified day earlier. That evidence was not controverted by the Crown. There was also evidence to the effect that the complainant, prior to the alleged offence, had put a blanket inside the boot and she was apparently wearing the same red jacket that she was wearing on the day of the alleged assault. So that there was a forensic explanation for red coat fibres found in the boot. There was, of course, medical evidence but clearly not of sufficient weight to make the Jury sure enough to bring in a verdict of guilty on that count. 5. There is now an application by the defence for the costs of the not guilty verdict. It is contested. The defence had also offered a plea of guilty to grave and criminal assault in relation to the stabbing incident. That also was not accepted. The defence pleaded not guilty to attempted murder. At that point the disputed facts on the alleged grave and criminal assault became an inevitable part of the trial. It must be recalled that the defendant had offered a plea of guilty to common assault in the Magistrate's Court and just before trial in the Royal Court and, as I have

said, both these offers were rejected. 6. The law on the subject is clear, under Article 2 of the Costs in Criminal Cases (Jersey) Law, 1961 : "Subject to the provisions of this Article, where any person is prosecuted or tried before a court to which this Article applies, the court may: ... (c) if the accused is discharged from the prosecution or acquitted, order the payment out of public funds of the costs of the defence." 7. A. G. -v- Bouchard

[1989] JLR 350 was clarified in *Romeril -v- A. G.* (26 th March 2001) Jersey Unreported; [2001/71], where the court held that in order to preclude the defence from receiving its costs, the defendant's conduct should be such, not only as to have brought suspicion upon himself, but also to have misled the prosecution into thinking that the case against him was stronger than it was. There is nothing of that here. The first count had to be defended. There is no doubt that the Crown felt that it had a strong case against the defendant and they proceeded to try him on a grave and criminal assault charge and the Jury acquitted him on that count. The Crown makes the point that the defence would have incurred the costs in any event. Crown Advocate Costa argues, as always persuasively, that if the Crown had decided not to proceed with the grave and criminal count, their version of what occurred on 16 th March 2002 in the car park at Mont Millias would inevitably have been so different that the defence would have had to prepare for 16 th March allegation in defending the attempted murder charge. 8. That is a convoluted argument and I cannot be concerned with hypothetical analyses of what might have been. The Crown rejected the two attempts by the defendant to plead guilty to common assault, both in the Magistrate's Court and in the Royal Court just prior to the indictment. The prosecution insisted on proceeding on a count relating to a more serious offence. It was not successful. I can see nothing on the facts which gives me any concern that the defendant's conduct brought suspicion upon himself and misled the prosecution into thinking that the case against him was stronger than it was. Everything that I observed during the trial on this point is to the contrary. 9. The costs of the defence on this count alone will be paid by the prosecution. If the costs were not agreed then the taxing master will have to adjudicate upon them. On the same basis the defendant shall have his costs of the hearing yesterday although whether two counsel were necessary for that application is not for me to decide. The costs, in my view, should be on the standard basis. There is no criticism in this judgment of the prosecution for proceeding in the way that it did. Authorities *A. G. -v- Bouchard*

[1989] JLR 350 . *Romeril -v- A. G.* (26 th March 2001) Jersey Unreported; [2001/71]. *A. G. -v- Gouveia*

[2000] JLR 324 . Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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