

JERSEY / JUDGMENT

AG v Campbell [2004]

JRC 060 (01 April 2004)

[2004] JRC 060

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JUDGMENT

THE COMMISSIONER: 1. This is an application by the Attorney General to quash the decision of the Assistant Magistrate to stay the proceedings in respect of indecent exposure and acting in a manner likely to cause a breach of the peace made against Mr Martin Gilbert Campbell on 22 nd January 2004. 2. The result of the Magistrate's decision was to discharge Mr Campbell from the proceedings and to order the Prosecution to pay Mr Campbell's costs. 3. The Crown now requests this Court to quash the Assistant Magistrate's decision to stay the proceedings in respect of the offences of indecent exposure and acting in a manner likely to cause a breach of the peace, and his decision to discharge Mr Campbell from the proceedings and to order the Prosecution to pay Mr Campbell's costs. We are asked to remit the matter to the Magistrate's Court with a direction that the prosecution for indecent exposure and acting in a manner likely to cause a breach of the peace continue. 4. This Application is strenuously resisted by Mr Campbell who appears by his counsel, Advocate Cadin. The brief background to the alleged offences are as follows: 5. On 9 th October 2003, the Police received a telephone call from a lady in St Martin, complaining that a man had driven past her in a car, stopped and masturbated at the side of the road. The lady had taken the car number. When the Police arrived at the address of the owner, Mr Campbell drove up in the car. He was heavily under the influence of alcohol but when he was taken to Police Headquarters, he declined to provide a breath specimen. When he came to Court for sentence for that offence, the following exchange took place between Centenier Letto of St Helier and the Assistant Magistrate, Judge Christmas: The Magistrate: "I am saying this again in fairness to Mr Cadin and to Mr Campbell. On the last occasion that Mr Campbell appeared, there was an indication that there might be further charges. Can Mr Campbell have the assurance that there will be no further charges forthcoming?" Centenier Letto: "That is my understanding, yes sir; there will be no further charges". 6. The trial proceeded entirely, then, on the basis of the driving offence. Advocate Cadin spoke in mitigation and eventually Mr Campbell was fined £800.00 or eight weeks in default, and was disqualified from driving for 30 months in Jersey. 7. It came as something of surprise then, that on 18 th November 2003, Mr Campbell was charged with indecent exposure or alternatively acting in a manner likely to cause a breach of the peace on 9 th October. 8. Originally there was to have been an argument before us that this Court did not have the power to interfere with the decision. That is not now pursued. 9. Centenier Letto cannot

recall to whom he spoke in order to make the statement that he made to the Assistant Magistrate but he clearly spoke to someone. It is apparently the policy at the Magistrate's Court that once a case is over, all the papers are shredded. 10. Centenier Messiter of St Martin, who was dealing with the alleged indecent exposure, was aware that investigations were continuing because an identity parade was organised and went ahead on 30 th October, where the complainant identified Mr Campbell. At that identification parade, Mr Campbell was accompanied by his legal adviser, not by Mr Cadin. There appears to have been some difficulty in coming to a decision but after Centenier Messiter had taken advice from the Legal Adviser's Department and had considered the matter, Mr Campbell was eventually charged with the offence on 18 th November, 2003. 11. The Assistant Magistrate considered the matter at a hearing on 22 nd January 2004. Advocate Cadin and the Legal Adviser, Mrs Shaw, were present. Both addressed the Assistant Magistrate on the facts and on the law. The Assistant Magistrate gave a judgment later that day. The final paragraph of what is clearly a carefully argued judgment reads as follows: "I agree with Mr Cadin insofar as the situation strikes at the root of the administration of our criminal justice system. It is no longer acceptable that a Centenier of one parish does not know or cannot ascertain whether action against a defendant is being taken currently by a Centenier elsewhere in the Island or whether the States of Jersey Police are continuing or have completed enquiries in respect of a particular suspect. This information must be available to those courts responsible for the administration of justice. In the particular circumstances of this case, I conclude that Mr Campbell was entitled to rely on the assurances given and that the Centenier could have, but did not, ascertain the correct information. Whilst all reasonable applications for an adjournment will be granted in order to conclude investigations or to allow the collation of information in respect of a particular defendant, it is unreasonable to expect the Court to support a deficiency of information or administration which undermines the system of justice and results in unfairness to a defendant. In the particular circumstances of this case, and I stress that it is in the particular circumstances of this case, I am going to grant the stay requested". 12. We entirely understand the sentiments. Magistrates in our view are entitled to have the fullest support from an efficient administration. 13. The Crown was not satisfied and asked for a statement of case, and in the statement of case the Assistant Magistrate said this: "Frankly, I was shocked when Mr Campbell came before the Court on 9 th November 2003 charged with new offences; offences, which although different from the drink driving offence, nevertheless arose from the events of 9 th October 2003. Centenier Letto, not being called upon to make a decision in relation to these new offences, his only obligation being to enquire when further offences might arise. It is significant that the first charge in time is brought by a St Helier Centenier, whereas the later charges were raised by a St Martin Centenier. This is not a case in which a Centenier's view of an offence or decision to charge or not to charge is reviewed by the Attorney General but simply one element of the prosecuting authority seemingly not being aware of the investigations and decisions made by another. There is, of course, a simple administration unit in the form of the criminal or justice unit at Police Headquarters and it seems to be unarguable that information with regard to the prosecution of Mr Campbell was neither shared between the parishes nor made available to the States Police and Centeniers alike at Police Headquarters. Undoubtedly there was unfairness to the Defendant in charging him with these further offences but my decision to allow the stay was

prompted by misuse of the court process. On 27 th October 2003, the prosecution had every opportunity to present to the Court a current appraisal of the investigation process. I believe the Court is entitled to ask itself whether the administration of justice is brought into disrepute when the Crown is allowed to ignore a Centenier's declaration of the sort given in this case." 14. We must first deal in law with the case of AG -v- Tracey (19 th December, 1996) Jersey Unreported; [1996/244]. This was not before the learned Assistant Magistrate but what the Court said in its conclusion was this: "We wish, first of all, to repeat that which this Court has said on more than one occasion about the difficult, if not impossible, position in which the magistrate is often placed when considering applications of the kind made in the context of the case under appeal. Judge Boxall was faced with an application persuasively made by experienced counsel for the Respondent. Who was there to put the other side of the argument and to place the relevant law before him? The answer is no-one. The reason of course is that the magistrate in Jersey is a juge d'instruction . He is not a juge d'instruction in the sense that that term is understood in France. But equally he is not a magistrate as that term is understood in England. He has a hybrid function which, although no doubt apt for the nineteenth century, has become for several reasons quite inappropriate for the process of criminal justice which has developed in recent years. The deficiencies were laid bare by the report of the Judicial and Legal Services Review Committee under the Chairmanship of Sir Godfray Le Quesne QC as long ago as 1990. The system cries out for legislative reform". 15. We feel that the learned Assistant Magistrate did fall into error because what he said at the end of his statement was this: "Put simply, the prosecution on this occasion simply fell short of the administrative standards required. No error was committed by the Centenier when giving the assurance he gave; he simply did not have sufficient information to give it. The decision to stay the proceedings was not made lightly but as an extreme measure to preserve the integrity of the Court and the information required upon which the magistrates must base their decision." The Centenier might have made a more felicitous answer but he gave to the Court in the circumstances what was his understanding and as we know it was not correct. 16. The decided cases leave us in no doubt. It is when the behaviour of the prosecution has prejudiced the fair trial of a defendant, or in other exceptional circumstances, that the public interest should not prevail. 17. When we look at the facts of the many cases cited to us by Advocate Cadin, we see a principal emerging. As was said by Lord Lowry in R -v- Horseferry Road Magistrate's Court, ex parte Bennett

[1993] 3 All ER 138 at 161: "I agree that, prima facie, it is the duty of a court to try a person who is charged before it with an offence which the court has the power to try and therefore that the jurisdiction to stay must be exercised carefully and sparingly and only for very compelling reasons. The discretion to stay is not a disciplinary jurisdiction and ought not to be exercised in order to express the court's disapproval of official conduct. Accordingly, if the prosecuting authorities have been guilty of culpable delay but the prospect of a fair trial has not been prejudiced, the court ought not to stay the proceedings merely 'pour encourager les autres.'" 18. Again, this case is not quite on all fours with that of R -v- Bloomfield

[1997] 1 Cr App R 135 but it was in that case that Lord Justice Staunton said this: "Looking at the case in the round, it seems to us that this is an unusual and special situation. The decision to defer the trial of December 20th was taken for the benefit of the prosecution in order that they would not be embarrassed when it was said in Court that no evidence was being offered. The statement of the prosecution, that they would offer no evidence at the next hearing was not merely a statement made to the defendant or to his legal representative. It was made coram judice, in the presence of the judge. It seems to us that whether or not there was prejudice, it would bring the administration of justice into disrepute if the Crown Prosecution Service were able to treat the court as if it were at its beck and call, free to tell it one day that it was not going to prosecute and another day that it was." We can well see that Mr Campbell had an expectation that he would not be prosecuted. But on careful reflection it does not seem to us that the decision of the Assistant Magistrate was prompted by deciding whether or not there was fairness to Mr Campbell or fairness to the public at large. As the Assistant Magistrate said: "Undoubtedly there was unfairness to the defendant in charging him with these further offences but my decision to allow the stay was prompted by misuse of the court process." 19. We have had many extracts cited to us on what is called the doctrine of legitimate expectancy. But the Royal Court dealt fairly and squarely with the matter in the case of *Token Limited -v- the Planning and Environment Committee*

[2001] JLR 698 at 709, where the court said this: "We do not find it necessary to decide today whether the English doctrine of legitimate expectation should be adopted in Jersey, and if so, how it should be adopted for our purposes. We have no doubt that the general principle enunciated in *de Smith, Woolf & Jowell's Judicial Review of Administrative Action*, which we have cited above, is part of the law of Jersey. "Legitimate expectation" may be a convenient label but it appears to us essentially an expression of the requirement for consistency and fairness in relations between the individual and the state. A number of decisions on planning appeals (e.g. *Wightman -v- Island Development Committee*, and *Scott -v- Island Development Committee*) could be explained in the context of the disappointment of a legitimate expectation, although that terminology was not used." 20. We would be failing in our duty as a court if we did not make it very clear, as is borne out by the cases referred to us, that if a person cannot be tried fairly for an offence then he should not be tried at all. The balance is one of consistency and fairness and in the balance must be put the interests of the individual and the interests of the state. 21. When Mr Campbell attended at Police Headquarters on 30th October 2003 with his legal adviser for a video identification, he must have realised that there was a decision to consider prosecuting him. Clearly Mr Campbell does not wish to be prosecuted but the reason that he gives in his two- page witness statement are factors which would have existed if the first charge had been held over to await a decision on the second charge. 22. As I say, we have considered very carefully all the authorities which have been put before us. But against the interests of Mr Campbell personally must be balanced the interests of the complainant. She has made a complaint, she has telephoned the Police, she has attended an

identification parade and at that parade she has identified Mr Campbell. 23. We cannot see, despite the eloquent address of Mr Cadin, that it can be shown that a trial cannot be fairly conducted or that Mr Campbell has suffered unfairness. We ask ourselves why there cannot be a fair trial. This does not mean that Mr Campbell is guilty of the offence with which he is charged. The magistrate that hears the case will decide on the facts whether the case is proven or not. If the case is proved, Mr Campbell will be found guilty and there will be ample opportunity to urge in mitigation the matters that concerned the Assistant Magistrate particularly, perhaps, the question of totality. We feel strongly that the Assistant Magistrate - and we fully sympathise with him - has manifested judicial disapproval of an administrative error. We have much sympathy with the Assistant Magistrate but there is no question in our view but that Mr Campbell will receive a fair trial. There is a pressing public interest in the prosecution and punishment of crime and therefore we grant the conclusions that the learned solicitor has asked for. 24. In this case I am going to make no order as to costs. Authorities AG -v- Devonshire Hotel Limited [1987-88]JLR 577. AG -v- Rouille [1995]JLR 315. R -v- Horseferry Road Magistrates Court ex parte Bennett [1993] 2 All ER 138. R -v- Croydon Justices ex parte Dean [1994] 98 Cr. App. R. 76. R -v- Beckford

[1996] 1 Cr App R 94 . R -v- Bloomfield

[1997] 1 Cr App R 135 . R -v- Horseferry Road Magistrates' Court ex parte DPP

[1999] EWHC A Admin 210. R -v- North and East Devon Health Authority ex parte Pamela Coughlan

[1999] EWCA Civ 1871. Attorney General's Reference Nos. 80 and 81 of 1999 [2000] 2 Cr. App. R. (S) 138. Ex parte Bloggs 61 [2003] EWCA Civ 686. The Police Force (Jersey) Law 1974, Article 3. Archbold (2004 edition), paragraphs 4-50 to 4-62. Magistrate's Court (Miscellaneous Provisions) (Jersey) Law, 1949, Part III A. Williams -v- AG (16 Oct 1989) Jersey Unreported; [1989/173]. AG -v- Tracey (19 December 1996) Jersey Unreported; [1996/244]. Token Ltd -v- PEC

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