

JERSEY / JUDGMENT

AG v Channing [2004]

JRC 126A (15 July 2004)

[2004] JRC 126A

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JUDGMENT

THE DEPUTY BAILIFF: 1. The indictment in this case contains two sets of offences, Counts 1 - 3 relate to offences under the Currency Offences (Jersey) Law 1952 and Counts 4 and 5 relate to alleged falsification and wrongful use of an insurance disc contrary to the Motor Traffic (Third Party Insurance) (Jersey) Law, . 2. Mr Channing represents himself and I was concerned to ensure that I had a proper opportunity of considering whether the counts were properly joined in the same indictment and, perhaps more importantly, whether there should be severance of the two sets of counts. So at my request Mr Robinson has very helpfully and very properly prepared a bundle which contains the relevant authorities and extracts from the leading text books. 3. The first question is whether these counts are all properly joined in the same indictment. I can deal with that very briefly as I have no difficulty in finding that they are. The relevant Rule is Rule 3 of the Indictment (Jersey) Rules 1972 which provides that: "Charges for any offences, whether "crimes", " délits " or "infractions", may be joined in the same indictment if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character." 4. It is clear from the authorities in England, where the Rule is similar, that the question is whether there is a link between the various offences. I am quite satisfied that there is here. They allege broadly similar types of conduct, namely falsification of documents whether currency notes or insurance discs. It is alleged that this was done by a similar method, namely by the use of a photocopying machine and all the offences were committed over a comparatively short space of time. So I have no difficulty in concluding that they do form a series of offences or offences of a similar character as set out in Rule 3. 5. But even where the counts are properly joined there is a discretion to sever the charges

- that is dealt with at Rule 6(2) which provides: "Where, before trial, or at any stage of a trial, the Court is of opinion that an accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that person should be tried separately for any one or more offences charged in an indictment, the Court may order a separate trial of any count or counts of such indictment". 6. The relevant principles which the English courts have applied in relation to similar wording in their statute are set out in Blackstone Criminal Practice (2004 Ed'n) at paras 10.27 and 10.28; Archbold (2004): para 1-168 to 172. I have also

been referred to Baimbridge -v- Attorney General

[1998] JLR221, in particular to a quotation from the case of R -v- Wilmot

(1998) 89 Cr. App. R 341 where Glidewell, L. J. said: "Theoretically, even if evidence in relation to one offence is inadmissible in relation to another, the judge has a discretion nevertheless not to sever the indictment, in other words, to allow the counts alleging the separate offences to be tried together. Clearly such a course falls within rule 9 of the Indictments Rules 1971. But in our view where evidence in relation to one matter is clearly inadmissible to prove another, it is normally right in such circumstances to sever the trial of the different offences". 7. The case of Baimbridge was not in fact concerned with whether that principle was correct or not. The Deputy Bailiff in the court below had applied it and had exercised his discretion entirely on whether the evidence on one count was admissible in relation to another by reason of similar fact evidence and the Court of Appeal, having held that he had wrongly concluded that it was, then followed the principle that he had adopted and held that there should have been severance. But Baimbridge and Wilmot were both cases concerning sexual assaults. 8. Mr Robinson accepts that the evidence on Counts 1 to 3 is not admissible on Counts 4 and 5 and vice versa, but it would seem clear from Archbold and Blackstone and the various cases they refer to that this is not a decisive point. It also appears that the courts may have adopted a slightly different approach in relation to cases alleging sexual misconduct as compared with cases alleging other offences as here. 9. The relevant principles seem to be summarized by Blackstone at paragraph 10.28 on page 1313 as follows. Having quoted the dicta of Lord Pearson in the case of Ludlow -v- Metropolitan Police Commissioner

[1971] AC 29, which is the leading authority, Blackstone says: "Thus, if counts for separate offences have validly been joined in one indictment, the normal consequence is that they will be tried together. The trial judge should exercise his discretion to order separate trials only if there is a special feature in the case which would make a single trial prejudicial or embarrassing. Two examples of such special features (number and/or complexity of the counts and scandalous nature of the evidence as to one of the counts) are given in the judgment, although the examples are no doubt not intended to be exhaustive." That is a reference to the comment of Lord Pearson where he says at 41: "The judge has no duty to direct separate trials under section 5(3) unless in his opinion there is some special feature of the case which would make a joint trial of the several counts prejudicial or embarrassing to the accused and separate trials are required in the interests of justice. In some cases the offences charged may be too numerous and complicated or too difficult to disentangle so that a joint trial of all the counts is likely to cause confusion and the defence may be embarrassed or prejudiced. In other cases objection may be taken to the inclusion of a count on the ground that it is of a scandalous nature and likely to arouse in the minds of the jury hostile feelings against the accused." 10. Archbold puts the matter as follows, at para 1-168 on page 78: "The mere fact that evidence is admissible on one count and inadmissible on another is not in itself a ground for ordering the counts to be tried

separately; but where it would be difficult in the course of a summing up to distinguish the evidence relating to the respective counts, and there is, therefore, a risk that the jury when considering one count may be unable to disregard the evidence relating to another count, there is a ground for ordering separate trials: R -v- Sims

[1946] K. B. 531, 31 Cr. App. R. 158,CCA. In R-v- Blackstock , ante, when dismissing an appeal against the refusal of the trial judge to order separate trials of pairs of robbery and firearm charges, where the evidence on one pair of charges was not admissible on the other the Court of Appeal said: "Every trial judge is familiar with the requirement, where more counts than one of a similar kind are joined in an indictment, of adding a warning to the jury that they must not add all the counts together and convict because there is more than one count in the indictment, or use the evidence on one count as evidence on the other. They should consider each count separately in the light of the evidence upon that particular count against the accused person, but no other. Juries have shown themselves well able over the years to follow such a direction and apply it." 11. There is no question here of the facts being particularly complex or of it being difficult to disentangle the evidence on one of the offences from the evidence on the other, nor is either type of offence particularly scandalous or prejudicial. 12. The real concern would be perhaps that the Jurats, if, for example, they decided that Mr Channing was guilty of the insurance offences, would then use that in deciding whether they also believed him in relation to the currency offences. That is the difficulty which always arises where evidence is admissible on one count and not admissible on another. As the authorities make clear juries can be relied upon with an appropriate direction to disregard inadmissible evidence. If that is true of juries it will certainly be true of Jurats who are permanent members of the Court. 13. Furthermore, there is the additional advantage in the case of trial by Jurats that the trial judge retires with the Jurats and can therefore be astute to ensure that they indeed do not use any inadmissible evidence. I have no doubt that, with an appropriate direction to the Jurats to consider only the evidence in relation to each count, there will be no risk of prejudice or unfairness to the defendant, and in the exercise of my discretion I decline to order severance. The result is that all the matters will go ahead on the date fixed. Authorities Indictments (Jersey) Rules 1972. Baimbridge -v- A. G. [1998] JLR221. R -v- Wilmot (1988) 89 Cr. App. R. 341 Ludlow -v- Metropolitan Police Commissioner [1971] AC29 Archbold (2004): para 1-168 - 172. Blackstone Criminal Practice (2004 Ed'n): paras 10.27 and 10.28 Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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