

JERSEY / JUDGMENT

AG v Coles [2003] JRC 198 (05 November 2003)

[2003] JRC 198

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judgment

COMMISSIONER: 1. This is an application for costs by the defendant after he was acquitted by the Inferior Number on 25 th July, 2003. The trial lasted three days and the accused gave evidence. 2. The point at issue was a narrow one. On 25 th January, 2003, following a search of his van outside the Hotel de Normandie, the defendant was found to be in possession of 26.10 grams of cocaine (58% by weight). The wholesale value was £1,800 and the street value £2,268. The defendant also had in his possession a carrier bag containing a set of electronic scales, a sieve, a grater and an empty film canister, all of which were found to have traces of cocaine on them. He pleaded guilty to possession but denied that the drugs were in his possession with intent to supply the drugs or part of them to another. 3. When the Crown indicted the defendant it had before it a question and answer interview in which certain facts had emerged. Basically they were that he had used cocaine but "a long long time ago", that he was not a habitual drug user and that he had paid £1,800 for the cocaine (the wholesale price). He said that he did not believe that the items in the carrier bag would show traces of cocaine (they did). He stated that the cocaine that he had purchased would have lasted him about six months. He told the police in interview that he had last used a gram "about eight months ago". 4. All this evidence was passed to an expert, Dr. Stephen Robinson, who concluded that the defendant was not an habitual user of cocaine and that the amount in the defendant's possession would have amounted to a year's supply (which contradicted the intention given to the police in interview by the defendant). 5. Later, the defendant's supplier, Steadman, made a statement in which he said that he had received £1,300 (and not £1,800) for the cocaine. £1,300 was, of course, £500 below the wholesale value suggested by D. C. Hafey, an operational Drugs Squad Officer dealing with dealers and abusers on a day to day basis. 6. It was on 15 th July, 2003 that the Crown received a report from Mr Michael Gafoor of the Alcohol and Drug Service which contradicted, in many respects, the question and answer interview. That report was made on 23 rd April 2003. Miss Fitz, it must be said, passed on the report as soon as she received it. It was only when Mr Gafoor's report was received that it became apparent to the Crown that the defendant had contradicted his previous statements. The contradictions merely strengthened the Crown's resolve. Mr Le Cornu has said as much. 7. There is no criticism of the conduct of the trial nor of the decision that was made by two experienced Jurats (Lieutenant Bailiff de Veulle and Jurat Le Breton) after a summing up. The argument lies in

the submission that the defendant brought suspicion upon himself and misled the prosecution into thinking that the case was stronger than in fact it was. 8. The law on the matter is not disputed. The Court has power under Article 2 of the Costs in Criminal Cases (Jersey) Law 1961 upon an accused being acquitted to "order the payment out of public funds of the costs of the defence". 9. In *A G -v- Bouchard*

(1989) JLR 350 the Court considered the circumstances in which the Court should refuse to make an order for costs. It adopted a practice direction issued under equivalent English legislation. In that practice direction there were examples of positive reasons for making an alternative order. The reason that the Crown says applies to this case: "Where the Defendant's own conduct has brought suspicion upon himself and misled the Prosecution into thinking that the case against him is stronger than it is, the Defendant can be left to pay his own costs". 10. It can be seen that it is only in exceptional circumstances that the Defendant will be precluded from receiving an award of costs. In *Romeril -v- A. G.* (26 th March, 2001) Jersey Unreported; [2001/71] the Court held that the reasons in *Bouchard* that I have cited above were to be read conjunctively. "... so that 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". 11. Miss Fitz made the cogent point that the defence has no duty to disclose its argument to the prosecution and went on to say that if the Crown had decided not to proceed on the more serious charge once Mr Gafoor's report had been received, then that would have been the end of the matter so far as costs are concerned. They did not. Mr Gafoor's report apparently only strengthened the Crown's resolve. The defendant could have remained silent. As the Court said in *A. G. -v- Anthony* (20 th January 1992) Jersey Unreported: "It cannot be said in law that remaining silent per se means that you bring suspicion upon yourself". 12. The defendant went into the witness box at trial. He was under no obligation to do so. He admitted that he had lied at his police interview. His explanation was that he was quite unused to police station question and answer sessions and that he felt intimidated. 13. I have read the question and answer session again and, as the Court said in *Galbraith -v- A. G.*

[1992] JLR 190 at 195, I am - "quite satisfied that there was no positive conduct in the actions of the defendant which positively led the prosecution into thinking that their case was stronger than it was". 14. I do not go as far as to say that the prosecution is to be criticised for proceeding to a trial on the more serious offence when they had a plea on the lesser offence of possession but I am not satisfied, in my discretion, that both limbs in *Bouchard* are fulfilled. 15. We allow the application and direct that the costs of the prosecution below will be paid for by the prosecution. The defendant shall have his costs of the hearing on Monday. Authorities *Costs in Criminal Cases (Jersey) Law 1961: Article 2. A. G. -v- Bouchard* [1998]JLR 350. *Romeril -v- A. G.* (26 th March, 2001) Jersey Unreported; [2001/71]. *Galbraith -v- A. G.*

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