

JERSEY / JUDGMENT

AG v Gillen [2017] JRC 022A (31 January 2017)

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JUDGMENT

THE COMMISSIONER: 1. This is an application by the Crown to add a count of attempting to pervert the course of justice to the existing Indictment, which contains a single count of grave and criminal assault. The nature of the alleged attempt to pervert the course of justice is that in interview in August last year the defendant admitted having got rid of some shoes, I think it was, or clothing, which he had been wearing at the time because he knew that they would be looked into. That is the sole evidence relied upon by the Crown and it was available to the Crown in August, or whenever they first received the details of the interview. Indictment took place on 16th December, 2016, and therefore clearly a few weeks before then the Law Officers' had received the necessary papers. At that stage there was still only one count in relation to the grave and criminal assault. It was only on 16th January, 2017, that the Crown notified the defence that they intended to apply to bring a count of attempting to pervert the course of justice and the actual count was supplied sometime last week. 2. In the ordinary course of events I would have had no hesitation in granting this application. It seems to me that on the basis of cases such as *R v Barrell and Wilson*

(1979) 69 Cr. App. R. 250 and *R v Ashill*

(2006) Crim 1233, this count is clearly a matter which falls within Rule 3 of the Indictments Rules 1972 in that it is founded on the same facts. That is because it arises entirely out of the main count and, as was said in *R v Barrell and Wilson*, one could not allege the attempt to pervert the course of justice but for the facts which give rise to the primary charge. So I have no doubt that it falls within Rule 3. Similarly, I would normally have had no hesitation in ruling that the count could be tried and, indeed, should be tried together with the count of grave and criminal assault and I would not have ordered severance under Rule 6(2). There is no new evidence in relation to this. This is evidence which would be admissible in any event in relation to the grave and criminal assault count, being what the defendant said at interview about his clothing. 3. Accordingly, in the normal run of events I would have had no hesitation in granting the application. However, a specific issue has arisen here and Advocate Boothman has informed the Court that, following receipt of the actual proposed additional count, a professional issue has arisen which

means that if this count is added he may not continue to act for the defendant. The trial date is fixed for 15th February, 2017. I accept that in this jurisdiction it is unlikely that another advocate can be found in time to get up to speed with the case and be in a position to do the defendant justice at trial. Accordingly, I think the inevitable consequence of my granting this application is that the trial date would have to be adjourned. 4. It is well-known that there is pressure on the Court in terms of Assize trials. This defendant is 21 years old and I think it would be wrong to make an order which had the result of delaying this trial, possibly for a little while, and leave it hanging over everyone unless there was very good reason. 5. I am not satisfied that there is good reason to do so in this case because:- (i) I regard the fault, if that would be the right word, for this late application as lying with the prosecution. There has been nothing new since August and certainly there is no good reason why this count could not have been presented on Indictment. It is the prosecution's doing that the application to amend is brought so late; and (ii) I do not regard it as essential for the interests of justice that this count be brought. The evidence can be adduced in any event in relation to the primary count and, no doubt in the event of a conviction, the surrounding circumstances can include what the defendant did with his clothing, although I would suspect that would have a minimal effect on anything. 6. Taken in the round, I consider that the balance of justice comes down in favour of refusing leave to grant this amendment on the particular facts of this case, given the resulting delay in the trial. I therefore reject the application to amend the Indictment. Authorities *R v Barrell and Wilson* (1979) 69 Cr. App. R. 250. *R v Ashill* (2006) Crim. 1233. Indictments Rules 1972. *AG-v-Channing*

[2004] JLR 265 . AG-V-T

[2014] JRC 096. Archbold 2017 - Joinder. Archbold 2017 - Perverting the Course of Justice. Note: At the subsequent trial the defendant was acquitted of the charge of grave and criminal assault. Page Last Updated: 27 Apr 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 25 October 2026 · Esheria