

JERSEY / JUDGMENT

AG -v- Humble [2018]

JRC 112A (27 June 2018)

[2018] JRC 112A

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JUDGMENT

THE DEPUTY BAILIFF: 1. The defendant in this case was indicted on three counts of rape. Those counts involved two complainants and were historic in nature. 2. Both of the complainants suffered from learning difficulties and one of the complainants in recent months had shown material deterioration in her mental and communication faculties by reason of dementia. 3. The Court made a number of rulings relating to the admissibility of evidence as a result of which, on 10 th April, 2018, the Crown offered no evidence. The defence now applies for its costs on an indemnity basis. 4. The relevant provisions governing the award of costs in criminal cases are to be found in Article 2 of the Costs of Criminal Cases (Jersey) Law 1961 ("the 1961 Law") which are as follows:- "2. Power of Royal Court or Magistrate's Court to award costs (1) 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. ... (4) The costs of the defence payable under paragraph (1)(c) shall be such sums as appear to the court reasonably sufficient to compensate the accused for the expenses properly incurred by the accused in carrying on the defence and to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in or incidental to the witness's attendance and giving evidence. ... (7) The amount of costs ordered to be paid under this Article shall be ascertained as soon as practicable by the Judicial Greffier." 5. Article 6 of the 1961 Law provides:- "The States may make Regulations generally for carrying this Law into effect and, in particular, may by such Regulations prescribe the rates or scales of payment of any costs payable out of public funds under this Law and the conditions under which such costs may be allowed." 6. No regulations have been made pursuant to Article 6 of the 1961 Law. The 1961 Law does not make reference to the term "indemnity costs" or, indeed, to "standard costs" which terms are regularly used in civil cases. Rather, as set out above, the costs shall be "reasonably sufficient" compensation for "expenses properly incurred". 7. It is the Crown's submission that the Court does not have power to order costs on an indemnity basis and in ordering costs the Judicial Greffier must apply the statutory wording. 8. Royal Court Practice Direction RC05/12 deals with the Taxation of Costs - Costs in Criminal Proceedings. The Practice Direction first makes reference to the statutory provisions mentioned above and then, at paragraph 1.3, states:- "1.3 Where a determination is

made on taxation under paragraph 1.2 of this Practice Direction, the costs that a party shall be entitled to recover is the amount allowed after taxation on the standard basis unless it appears to the Court to be appropriate in the circumstances to order an award of costs on the indemnity basis." 1.4 The terms "standard basis" and "indemnity basis" shall have the same meaning as that under Part 12 of the Royal Court Rules 2004." 9. It is clear, therefore, that the Practice Direction anticipates that the Court may make orders for costs in criminal cases on the standard or indemnity basis. The Crown thus contends that the Practice Direction is ultra vires to that extent. 10. It may be that the answer to this point is to be found within the wording of the 1961 Law itself. As I have set out above Article 2(4) makes provisions for the costs of the defence as being "such sums as appear to the court reasonably sufficient to compensate the accused for the expenses properly incurred..." 11. The Court therefore determines what the appropriate sums are and it is arguably acceptable, in so doing, for the Court to set out a regime for the calculation of costs and the identification of what sums appear to it to be reasonable. The Court may say in general terms that on some occasion it will appear to the Court to be sufficient to order costs on the basis equivalent to the standard basis and on other occasions to costs on the indemnity basis. 12. These comments are obiter dicta however as, even assuming that the Court has jurisdiction to order indemnity costs, I do not propose to do so on this occasion. 13. The defence pointed to a number of issues relating to the conduct by the Crown of this case. The defence argued that those issues take this matter out of the ordinary and should lead to an order for indemnity costs. 14. The defence puts before me the case of *Dick -v- Dick*

[1990] JLR Note N2C where Le Quesne JA said:- "We appreciate those circumstances but it appears to us that if for reasons of his own, whether good or bad, a party who has instituted proceedings subsequently decides to drop them before they come into court, it is fair that he should pay for that conduct the price of compensating the other party by way of indemnity costs." 15. It was suggested that the discontinuance by the Crown in offering no evidence, falls within the principle articulated by Le Quesne JA in *Dick -v- Dick* . I cannot agree. There is a difference between circumstances in which a party commences civil proceedings, brings the other party before the Court, and then drops those proceedings and circumstances in which the Attorney General brings a prosecution and then, the Court having determined what the evidentiary position might be, then reviews the position and determines that the evidentiary test is no longer passed. The prosecution was not elective, nor was the discontinuance. 16. The defence points out that the defendant is man of good character and had always denied the charges and voluntarily attended police interviews in the United Kingdom. One of the complainants had been screened for dementia when she made her allegation in 2013 and they had a sad history of learning difficulties. The defence points to difficulties with her credibility and that it must have been apparent to the Crown that there were problems with her evidence and indeed with her ABE interview (on which the Court ruled) and yet nothing was done to correct the position. There was, so the defence observed, very material delay between the complainant making her allegation and the matter being indicted before the Court. 17. The defence also point to problems with disclosure which required the defence to make a

series of applications for specific disclosure. 18. The Crown for its part disputes the characterisation given to the proceedings by the defence and observes that the Court ruled in the Crown's favour in connection with one hearing concluding it was not an abuse of the Court process to bring the prosecution. 19. When the Crown offered no evidence it made a public statement to the effect that this did not indicate a lack of faith by the Crown in the veracity of the allegations made. That may well be the view that the Crown takes but it is to my mind regrettable that a statement was made which in any way suggests that the defendant in this case might, notwithstanding the discontinuance of the proceedings, be guilty. This defendant, as any defendant, is entitled absolutely to the presumption of innocence unless and until he is found guilty following a trial. As far as the Court is aware, the defendant in this case has no previous convictions and there is no reason to suppose that he is other than a man of good character. 20. However that minor flurry at the end of this case does not in my view affect the appropriate determination as to costs. 21. It is true that this case had a number of difficulties. It is true that, ultimately, in part as a result of the deterioration of the mental state of one of the complainants and the delay in bringing the matter to the Court (for which in neither case could the defendant bear the slightest responsibility) the case did not proceed. That is not to say that it was not appropriate to bring the case in the first place nor that the Crown has, in subsequently withdrawing it, done anything other than apply a perfectly proper assessment of the evidence as it then was following various rulings by the Court. It may be that there were difficulties with the disclosure but in my view they were not such as to point to a special or unusual feature which justifies an order for indemnity costs. 22. Accordingly, even were I to have the jurisdiction to do so I decline to make an order for indemnity costs in this case and make the usual order that the defendant shall have his costs. Authorities Costs of Criminal Cases (Jersey) Law 1961. Royal Court Practice Direction RC05/12. Dick -v- Dick

[1990] JLR Note N2C. Page Last Updated: 16 Jul 2018 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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