

JERSEY / JUDGMENT

AG -v- Rawlinson [2016] JRC 211 (16 November 2016)

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JUDGMENT

THE commissioner: 1. The defendant faces trial on three counts which will take place on 1 st December. On 2 nd November his application for bail was refused by the Magistrate. He now seeks to overturn that decision. The background is as follows. 2. On 12 th August, 2016, the defendant appeared before the Magistrate's Court to face five counts on the first charge sheet. Charges 1 to 3 were motoring offences, charge 4 was an assault on a police officer and charge 5 was an assault on the defendant's partner. He pleaded guilty to charges 1 and 2, charge 3 was dismissed; so at that stage he faced trial on charges 4 and 5, to which he pleaded not guilty. He was granted bail on certain conditions, one of which was that he should not have any contact with his partner. 3. On 19 th August the Magistrate ordered an arrest warrant for alleged breach of the condition, in that he was he alleged to have had contact with his partner and attended at a prohibited address. He had, in fact, breached it also by letting her reside with him. On 22 nd August he appeared before the Magistrate's Court and admitted breaching the condition that he not contact his partner. He was refused bail on the basis of a fear that he would commit further offences. 4. On 30 th September he appeared before the Magistrate's Court and faced the second charge sheet. This involved a charge of harassment, assaults on two victims and two drug offences. The two assault offences, if proved, would have been committed whilst he was on bail for the offences on the first charge sheet. He pleaded not guilty to charges 1 to 3 and he reserved his plea to the two drug charges. There was no bail application at that stage. 5. He appeared again on 5 th October. Now at that stage he pleaded guilty to the assault on the police officer on the first charge sheet on the basis of recklessness and no evidence was offered on charge 5, the alleged assault on his partner. In relation to the second charge sheet he pleaded guilty to the drug offences but maintained his not guilty plea to charges 1 to 3. So the upshot after that was that he had pleaded guilty and was in due course to be sentenced for the three motoring offences on the first charge sheet, the assault on the police officer on the first charge sheet and the two drug offences on the second charge sheet. He faces trial which, as we say, is to be heard on 1 st December on the offences of harassment and the alleged assaults on two victims on the second charge sheet. 6. On that day, 5 th October, he was granted bail and this was not opposed by the prosecution. It was, however, subject to conditions which had been supplied in advance to the defendant's advocate and which he agreed to. The key conditions for our purposes were that he

should reside at a certain address, there was to be a curfew between 10pm and 6am, there was to be no contact, direct or indirect, with the victim of the harassment charge or the two alleged assaults and, significantly for us, he was not to enter the Parish of Grouville. 7. On 1 st November the Magistrate ordered his arrest on suspicion of breach of the last condition, in that he had been seen outside Grouville Parish Hall. On 2 nd November he attended before the Magistrate's Court for a routine hearing and was arrested at that time. He admitted the breach. What was said was that a witness had seen the defendant outside Grouville Parish Hall on 27 th October as she drove past in her car. She stated he was sitting on a motorbike in the Parish car park and stared at her as she drove past making eye contact. The defendant admitted being there but did not accept, and does not accept, that he saw the witness or that they made eye contact. He says that he thought the bail condition excluded him from Gorey rather than from the Parish of Grouville. The complainant in the harassment charge is the defendant's ex-wife and the complainants in the assaults are her new husband and her step-son. The Magistrate revoked bail on the grounds of the risk of further reoffending in the light of the breach of this condition. 8. So that is the background. We remind ourselves of the test on a hearing such as this. This is not an original application before the Royal Court, it is a review of the Magistrate's decision because the matter remains before the Magistrate. This Court can only intervene if it considers that the Magistrate's decision is outside the band of reasonable decisions. 9. Advocate Renouf has submitted that this was a very technical and minor breach. The aim of the condition was to prevent the defendant from in any way intimidating or approaching the relevant witnesses. There was no question of that here; he was not to know that a witness would drive past Grouville car park at that time and it cannot, he submits, have been the defendant's intention to intimidate or interfere. The breach was also, he says, inadvertent because the defendant thought that the condition restricted him from entering Gorey Village rather than from Grouville. Furthermore, Advocate Renouf submits that the condition was in any event disproportionate. It was far too wide. It would stop the defendant simply from driving through Grouville. Furthermore it would not achieve the purpose which lay behind it because the complainants live in Gorey Village and the Parish of St Martin extends very close to their home, so that the defendant could, without being in breach of the condition, approach much closer to their home than he was on this occasion when he was in the car park at Grouville which is a considerable distance away. 10. One of the Jurats considers that the Magistrate's decision was beyond the band of reasonable decision, largely for the reasons put forward by Advocate Renouf. That Jurat considers this was indeed a minor technical breach which was not sufficient to justify reversing the decision to grant bail on 5 th October. To revoke bail for such a minor breach of an unduly wide condition would, in his opinion, be disproportionate. 11. The other Jurat considers that the breach has to be considered in the light of what has occurred before. This defendant breached his previous bail conditions on both 18 th and 19 th August by having contact with his partner despite the condition that he should not do so. Advocate Renouf has explained the reasons for that and there may have been some mitigating circumstances but nevertheless it amounted to breaches of the condition on a previous occasion. The defendant also has a long record of criminal convictions including several occasions on which he has breached probation orders and community service orders. In short this Jurat concludes that the defendant has shown himself to be someone who does not abide by orders of

the court. Furthermore the assaults, if proved, were committed whilst on bail. 12. In addition the latter Jurat cannot accept that there can be any reason for the defendant to have thought that the condition only applied to Gorey rather than to the Parish of Grouville. Not only did he sign the form of bail which set out the condition very clearly, but he was represented at the time by Advocate Landick, who was notified in advance of the proposed condition and must be taken to have explained it to his client and to have obtained the defendant's instructions to agree to it. This Jurat has reminded himself of the appropriate test for review and, bearing that in mind, he concludes that he cannot find, in view of the matters just described and despite the minor and technical nature of the breach, that the Magistrate's decision that bail should be revoked on the ground of a fear of further offending, was outside the band of reasonable decisions. 13. I find myself persuaded by the reasoning of the latter Jurat and therefore, by a majority, this application is refused. 14. The foregoing paragraphs of this judgment were delivered by the Commissioner at the conclusion of the hearing. However, the Commissioner omitted to deal in the judgment with one aspect which the Jurats had asked him to. Accordingly what follows is an addition to the judgment delivered at the time. 15. Although divided on the outcome of the appeal, the Court was unanimous in having some concern at the width of the bail condition excluding the defendant from an entire parish, in this case Grouville. We acknowledge that defendants are sometimes excluded from entire counties in England as a bail condition but that is where there is no need for the defendant to go anywhere near the county in question. It seems to the Court that the position in Jersey is rather different given its small size and the likelihood of defendants wishing or needing to pass through a parish as part of their ordinary activities. 16. Accordingly, whilst not excluding the possibility of imposing such a condition when necessary or appropriate, the Court is of the view that it is unlikely that such a wide condition will be necessary or proportionate in most cases. It seems to the Court that an exclusion from a more localised area (where necessary) will be a more proportionate method of seeking to achieve the objective underlying such a condition, namely prevention of contact with or intimidation of potential witnesses or other interference with the course of justice. We therefore invite the Magistrate's Court to consider very carefully whether such a wide condition is really necessary in future cases. No Authorities Page Last Updated: 09 Dec 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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