

JERSEY / JUDGMENT

AG -v- Self [2009] JRC 122 (09 June 2009)

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JUDGMENT

THE commissioner: 1. The defendant stands indicted on a number of counts alleging forgery, obtaining money by false pretences and fraudulent conversion and was due to stand trial on 3rd June, 2009. 2. On 2nd June, I sat to hear a number of defence applications arising out of the defendant's summons dated 1st June, 2009, as a result of which the trial date was vacated. All but two of the applications were dealt with on 2nd June, but two were adjourned to 9th June, when they were dismissed. I now set out my reasons. Bail surety 3. The defendant sought an order that in the event that the trial did not commence on 3rd June, 2009, bail surety provided of £10,000 be released to Mr Blakeley for the defendant so that such sum may be used by the defence in part payment of legal representation costs. 4. The costs of the defence had escalated and the defendant's funds were limited. The right to the return of the bail surety of £10,000 which had been provided by the defendant's partner, had already been assigned to Mr Blakeley but that would not now be available to Mr Blakeley until the end of the trial, now scheduled for 13th December, 2009, assuming that the defendant complied with the terms of his bail in the meantime. The thrust of the application was that without the release of these monies now, the defendant would not receive a fair trial in that Mr Blakeley would not be able to prepare properly. 5. The application failed without consideration of the merits for two reasons. Firstly, it was brought before me as a single judge when it should have been the subject of an application to the Inferior Number. Secondly, it was unsupported by an affidavit setting out the defendant's financial position. Costs 6. On 2nd June, 2009, the prosecution was given leave to withdraw counts 5-29 of the Indictment and the defendant applied for the costs incurred in preparation of and incidental to those counts on an indemnity basis, or such other basis as the Court deemed appropriate. The defendant also sought the costs of and incidental to the summons on an indemnity basis or such other basis as the Court deemed appropriate. For the reasons set out below, it is not necessary to set out the grounds upon which the application was made save that Mr Blakeley submitted that the defendant had incurred substantial costs in preparing for counts 5-29, including obtaining opinions from an accountant and English counsel which had been wholly wasted as a consequence of the withdrawal of these counts. Mr Blakeley was very critical of the conduct of the prosecution (although not of Mr Cadin personally) which he said was entirely to blame for these wasted costs. 7. Mr Blakeley took me and Mr Cadin by surprise by announcing that this application for costs was not brought under the Costs in Criminal Cases (Jersey) Law ("the 1961 Law") but under the Court's inherent jurisdiction and this because it was

not clear to him that the defendant had been "discharged from the prosecution" for the purposes of Article 2(1)(c) of the 1961 Law . He produced no authority to support the assertion that the Court had an inherent jurisdiction to award costs in criminal cases and could cite no example of the Court ever having exercised that jurisdiction pre let alone post trial. Furthermore, he produced no authority to show that the Court had awarded costs in criminal cases under the 1961 Law pre trial. 8. Mr Cadin, whilst conceding that it might be arguable that the defendant had been discharged from the prosecution in respect of counts 5-29 of the Indictment for the purposes of Article 2(1)(c) of the 1961 Law, submitted that, leaving aside the issue of lack of authority, an application for costs in criminal cases could only be dealt with properly at the end of the proceedings when the evidence actually adduced had been heard, verdicts reached and the sentences imposed, if any. Counts 5-29 had for example been replaced by two new counts which he said reflected the essence of the criminality alleged in counts 5-29. A conviction or acquittal on those two new counts could well be material to the issue of costs. Furthermore, even if an order for wasted costs were made at this stage, the Greffier would be unable to assess the extent to which they had been wasted until after the outcome of the trial itself. 9. In the absence of any authority, I was not prepared to proceed on the basis that the Court had an inherent jurisdiction to order costs in a criminal case pre trial. In so far as the 1961 Law was concerned there is no power to award costs of summonses issued or applications made on an interlocutory basis by the defence. Costs can only be awarded under Article 2(1)(c) where the defendant has been "discharged from the prosecution or acquitted". The defendant has not been acquitted from any trial of counts 5-29 nor had the prosecution accepted a not guilty plea to those counts. The counts had been withdrawn with leave. 10. In AG-v-Picot 2000/124 (not cited by Mr Blakeley) it was contended that "discharged from the prosecution" was wide enough to embrace interlocutory decisions in favour of the defence, the costs in that case relating to preparation for a Newton hearing, preparation and hearing of applications for the disclosure of medical records, the preparation and hearing of an application for editing of the Probation Report and preparation for and hearing of the application for costs. Bailhache, Bailiff, rejected that contention finding (paragraph 15) as follows:- "In my judgement the absence of the words "discharged from the prosecution" in the English statute upon which the 1961 Law was clearly based is attributable to the different procedures which obtain in this jurisdiction. A defendant may be presented before the Royal Court by the Attorney General in two different ways.

- (1) He may, if committed by the Magistrate, be indicted to stand his trial. Having been tried he is convicted or acquitted.
- (2) A defendant may be summoned to answer a charge that he has committed a statutory infraction. In such event he is presented, not on indictment, but on a billet which sets out the statutory offences alleged against him. He is not invited to plead to such allegations but he is asked whether or not he admits the facts. If he does not admit the facts the case is sent en preuve before the Inferior Number of this Court. At trial he may be convicted, but if he is not convicted, he is discharged. A defendant presented on a billet is not acquitted. In my judgement the words "discharged from the prosecution" in Article 2(1)(c) of the 1961 Law mean that the prosecution has been unable to satisfy the Court that a statutory infraction

has been committed and the Court has in consequence discharged the defendant. They have no wider meaning than that." 11. Picot was not concerned with counts which had been withdrawn by the prosecution and therefore it might, as conceded by Mr Cadin, be arguable that the Court had power to award costs in relation to those counts on the basis that the defendant had been discharged from their prosecution but I agreed with Mr Cadin for the reasons put forward by him that the time for any such application is at the end of the proceedings. Such an application must be supported by authority. 12. Thus I concluded that I had no power under the 1961 Law to award the costs of the summons and any application arising out of the withdrawal of counts 5-29 should be brought at the end of the proceedings. 13. Finally, it is apposite to remind counsel of the duty to research the Law before making an application and to bring relevant authority whether for or against to the attention of the Court. That duty was not fulfilled on this occasion. Authorities Costs in Criminal Cases (Jersey) Law 1961. AG-v-Picot 2000/124. Page Last Updated: 29 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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