

JERSEY / JUDGMENT

AG -v- Teixeira [2018]

JRC 072 (17 April 2018)

[2018] JRC 072

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JUDGMENT

THE commissioner: 1. This is an appeal by the Attorney General against the decision of the Assistant Magistrate on 1 st December, 2017, to stay the proceedings against the respondent as an abuse of process. 2. The appeal is brought under Article 21 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 by way of case stated, on the ground that the decision of the Assistant Magistrate was wrong in law.

Background

3. On 30 th June, 2017, the respondent was involved in a traffic accident in which the car he was driving collided with a motor cyclist, who sustained a broken leg. He was interviewed by the police on 29 th July, 2017, after which he was told that the matter would likely be sent to the Magistrate's Court and that he should attend at St Clement's Parish Hall on 6 th September, 2017, to receive a court date. 4. On 6 th September, 2017, the respondent attended St Clement's Parish Hall, and it was agreed by Advocate Yates, on behalf of the Attorney General, that the respondent's affidavit of 23 rd November, 2017, accurately reflects what took place. I therefore set out the relevant paragraphs as follows:- "13 When I attended the Parish Hall, I spoke to a female Centenier who introduced herself to me but I cannot independently recollect her name. However, I now know she is Centenier Mandy Le Brocq. She cautioned me and charged me with the offence of causing serious injury by careless driving. After charging me, the Centenier said that she had reviewed all of the paperwork and heard the recordings. I am not entirely sure what she meant by 'recordings' but assumed she was talking about the interview I gave or the account given by the witnesses. She then explained that she had three options in how to deal with the matter. She could either:- (i) send the matter to the Magistrate's Court; (ii) deal with the matter at the Parish Hall and dispose of it by way of a fine; or (iii) deal with the matter at the Parish Hall and dispose of it by way of written caution." I asked her what a written caution was and she explained. She then referred to the Road Traffic Law (including the year, which I cannot recall). The Centenier said that whilst she acknowledged PC Dupré wanted the matter to go to Court, she said she would deal with it by way of a written caution, which I gladly accepted. I then signed the written caution form (which I exhibit at page 1 of Exhibit 'NFT') before I was told

I could leave. As I walked toward the door, the Centenier said to me that she would now have to explain her decision to the Police. I thought nothing more about this comment at that time. Following that Parish Hall Enquiry I believed that the matter was now over and that I would not be prosecuted. I had been very worried about it and it was therefore a huge sense of relief." 5. On 19 th September, 2017, St Clement's Parish wrote to the respondent, informing him that at the direction of the Attorney General, he had to attend a further Parish Hall inquiry on 27 th September, 2017, and at that inquiry he was told that his case would be sent to the Magistrate's Court. 6. On 11 th October, 2017, the respondent was charged in the Magistrate's Court with an offence contrary to Article 26A of the Road Traffic (Jersey) Law 1956 . He reserved his plea, and the matter was adjourned until 1 st December, 2017, when he successfully applied for a stay of prosecution on the basis that it was an abuse of process. 7. Article 26A carries a maximum sentence of imprisonment for a term of two years and an unlimited fine. It also provides at Article 26A(4):- "4 A person convicted of an offence under this Article shall, without limiting the power of the court to order a longer period of disqualification and unless the court for any special reason thinks fit to order otherwise, be disqualified for a period of 12 months for holding or obtaining a licence." The disqualification can only be imposed on a conviction before a Court and would not therefore apply on the giving of a written caution by a Centenier. By being cautioned, therefore, the respondent avoided what would otherwise have been a mandatory disqualification, unless special reasons applied. 8. Written skeleton arguments were filed by both the respondent and the Attorney General and the Assistant Magistrate was referred to the relevant case law, to which I will come to below, but in essence, Advocate Dale, on behalf of the respondent, summed up her application to the Assistant Magistrate on behalf of the defendant in this way:- "(1) The prosecution of the defendant, in all of the circumstances, is prima facie an abuse of process. Not only has there been a clear representation that the defendant would not be prosecuted but he has acted in reliance of that representation. To now prosecute him would be a clear affront to justice and undermine the public's confidence in the Parish Hall enquiry system and the Criminal Justice system generally. (2) The offence with which the Defendant is charged is not in itself serious, which goes against the public interest in prosecution. Further, the marking of this offence by written caution and the financial recompense [the motor cyclist] can receive either through insurance or a civil action further weighs against prosecution. (3) In determining whether the prosecution is an affront to justice, the balance of the competing public interests falls in favour of the defendant and therefore the prosecution should be dismissed as an abuse of process." The judgment 9. The Assistant Magistrate issued a full written judgment on 1 st December, 2017, later supported by way of a case stated. He set out a lengthy extract from the judgment of Sir Michael Birt, Commissioner, in AG-v-Bacon

[2016] JRC 181 , which summarises the legal principles to be applied. The leading authority is that of the Privy Council decision in Warren-v-AG

- [2011] JLR 424 , which summarises in the headnote the two situations in which the Court may stay criminal proceedings as an abuse of process:- "Held, dismissing the appeal: The court had power to stay proceedings for abuse of process in two distinct categories of case: first, where it would be impossible to give an accused a fair trial, and secondly, where it offended the court's sense of justice and propriety to be asked to try an accused in the particular circumstances of the case (to avoid confusion, the issue in the second category should not be framed as whether it would be 'fair' to try the accused). In the first category, if the court concluded that an accused could not receive a fair trial, it would stay the proceedings without more. No question of balancing competing interests would arise. In the second category, the court was concerned to protect the integrity of the criminal justice system. A balance had to be struck between the public interest in ensuring that those accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct did not undermine public confidence in the criminal justice system and bring it into disrepute. An infinite variety of cases could arise. Among the factors frequently taken into account by the court when conducting the balancing exercise were the seriousness of any violation of the accused's (or a third party's) rights; whether the police acted in bad faith or maliciously, or with improper motive; whether the misconduct had been committed in circumstances of urgency, emergency or necessity; the availability of a direct sanction against those responsible for the misconduct; and the seriousness of the offence with which the accused had been charged. Whether it could be said that 'but for' an abuse of executive power an accused would not have been before the court at all was a factor for consideration but it would not always or even in most cases necessarily determine whether a stay should be granted. Proceedings should not be stayed for abuse of process merely to punish prosecutorial or police misconduct." 10. The respondent's application came under the second category, namely whether it offends the Court's sense of justice and propriety to be asked to try a defendant, and where a balance had to be struck between the public interest in ensuring that those accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct did not undermine public confidence in the criminal justice system and bring it into disrepute. 11. In AG v Bacon a former Attorney General had, in 1985, directed that complaints of indecent assault against the defendant should proceed by way of written caution; he was therefore duly cautioned. Proceedings for these and other allegations of indecent assault were then brought by a successor Attorney General in 2016, some 31 years later. Reference was made to the English Court of Appeal decision in R v Abu Hamza
- [2007] 1 Cr. App. R.27, in which it was alleged that there had been excessive delay in the bringing of proceedings, and express or implied promises by agents of the state that no action would be taken. Having reviewed the authorities, the English Court of Appeal summarised the position at paragraph 54 in this way:- "54 These authorities suggested that it is not likely to constitute an abuse of process to proceed with a prosecution unless

- (1) there has been an unequivocal representation by those with the conduct of the investigation or prosecution of a case that the defendant will not be prosecuted and (ii) that the defendant has acted on that representation to his detriment. Even then, if facts come to light which were not known when the representation was made, these may justify proceeding with the prosecution despite the representation." 12. The Court in AG-v-Bacon found that where the Attorney General directs that a matter should proceed by way of caution rather than by prosecution, it would prima facie be an abuse of process to then bring a prosecution for the offence in question, as such a decision amounts to an implicit and unambiguous representation by the Attorney General that the defendant will not be prosecuted. There was an important public interest in people being entitled to rely upon a decision of this nature by or on behalf of the Attorney General as head of the prosecution service. Furthermore, where a significant period had expired, there would be an abuse, even if there was no specific detriment to a defendant other than the lapse of time. No stay was actually granted in that case, for other reasons which are not relevant to the case of the respondent. 13. The Assistant Magistrate also referred to the case of AG v Devonshire Hotel Limited [1987-88] JLR 577, in which a Centenier, having conducted an inquiry, decided not to take proceedings against the defendant company for admitted infractions of the Licensing Law. The decision was overridden by the Attorney General, who directed, under Article 3(4) of the Honorary Police (Jersey) Law 1974, that the Centenier should take proceedings. The Magistrate, rejecting a plea of autrefois convict, found that the Attorney General could not direct the Centenier to reverse his initial decision not to prosecute because, having informed the defendant company that no proceedings would be brought against it, it would be contrary to the rules of natural justice to do so now. Article 3(4) is in these terms:- "(4) Where a Centenier declines to charge any person, the Attorney General may give such directions to such persons as the Attorney General thinks appropriate." 14. Quoting from the headnote in Attorney General v Devonshire Hotel Limited :- "(2) Article 3(4) of the Police Force (Jersey) Law, 1974, confirmed, rather than reduced the Attorney General's exclusive power and right to control the prosecution of offences in the Island, in the exercise of which he could, if necessary, overrule a Centenier's decision not to prosecute. This followed because (a) in the absence of clear and express wording, it should be presumed that the statute did not alter the common law: thus, the conferring of a power under art. 3(4), on a member of the Police Force, to refer a case to the Attorney General for directions whenever a Centenier 'declines to charge any person' did not imply that the Attorney General had the power to overrule a Centenier's decision only upon such a reference being made;
- (b) reading art. 3(4) together with the other provisions of art. 3, it was clear that the paragraph confirmed a Centenier's powers of formal charging but without in any way restricting the 'customary powers of the Attorney General'; (c) construing the paragraph so as to avoid absurdity, it must be held that the Attorney General's powers could not depend on how and when he learned of a potential prosecution since, if this had been the case, it would have led to the absurd situation of his having to issue directions without delay (and sometimes before the Centenier had even considered the police report) before the Centenier could decide not

to proceed, thereby closing the door to any possible prosecution; and (d) in any case, giving the police the power to make a referral to the Attorney General 'where a Centenier declines to charge any person' meant, giving the words their ordinary and natural meaning, that the Centenier should already have declined to charge before the police's power of referral arose. This accorded with the legislative policy of providing a balance between the honorary police and the States Police and giving the opportunity, where appropriate, of inquiring further into or overruling a decision of a Centenier... . (3) The argument based on natural justice - that the respondent had been unfairly misled into believing that he would not be prosecuted - failed. The purpose of the rules of natural justice was primarily to ensure the fairness of administrative procedures and in the present case the Attorney General was neither exercising a discretionary administrative power nor, even if he had been, had he exercised it improperly. The only apparent 'unfairness' in the proceedings was based upon the fact that the respondent did not know the law and wrongly believed that the Centenier's decision not to prosecute was final and, although such a belief might in future be corrected by the Centenier's warning that his decision was subject to later directions from the Attorney General, the respondent could not complain that the law had been unfairly applied to him... ." Although not couched in terms of "abuse of process", it is clear that the Court was concerned with the propriety of the conduct of the Attorney General in overriding the decision of the Centenier and that it found no impropriety on his part. 15. As the Assistant Magistrate pointed out, the case of the respondent can be distinguished from that of the defendant in *Attorney General v Bacon* , where it was the Attorney General himself who directed that a caution be administered by the Centenier. The Assistant Magistrate also distinguished the case of the respondent from the facts in *Attorney General v Devonshire Hotel* because in that case, the Centenier had decided not to pursue the company concerned, whereas "here, the Centenier had made her own decision to dispose of the matter." 16. The Assistant Magistrate recognised that the Attorney General had a power of supervision over a Centenier and a power to direct a charge both under the customary law and under Article 4(3) of the Honorary Police (Jersey) Law 1974 . 17. Applying the law to the facts, the Assistant Magistrate questioned whether the charge against the respondent was serious:- "19 The offence under Article 26A is one of causing serious injury by careless driving. The use of the word 'serious' does not, in my judgment, mean that the offence must necessarily be categorised as serious in the sense of that extract from *Warren* . The motorcyclist suffered fractures to the leg and this meets the test for serious injury in the Law. The acknowledged driving, however, would be regarded as low level careless driving of the type that will often be dealt with at a Parish Hall inquiry. If a simple careless driving charge (Article 25 of the Law) came to the Magistrate's Court the Sentencing Guidelines indicate a fine but no disqualification or endorsement. Further the Law does not preclude a Centenier from dealing with an offence under Article 26A. The matters in *Warren* (drug trafficking) and *Bacon* (child abuse) are evidently far more serious." 18. The Assistant Magistrate then weighed in the balance the conduct of the Centenier:- "20 On the other side of the balance is the conduct of the Centenier. Whilst her decision might be regarded as wrong it was not ultra vires and there is nothing to suggest misconduct: perhaps rather a

lack of awareness of the Law and of training or guidance as to the relatively recent introduction of this offence and its penalties. It is apparent, however, that she was aware that she would have to explain her decision to the States Police." 19. The Assistant Magistrate found that there had been an unequivocal representation not simply that the respondent would not be prosecuted "but more, that he had been formally cautioned for the admitted offence". 20. The Assistant Magistrate then found that the defendant had acted upon that representation to his detriment. The evidence in this respect was contained within the respondent's affidavit as follows:- "18 At the time of the collision and my attendance at the Parish Hall, I was living with my partner and our daughter. I was working long hours as a cleaner for G4S but found this job to be very stressful so I was looking for alternative employment. A friend of mine suggested that I try scaffolding and I was offered a job with Scaffolding 4 Less. The job required me to have a driving licence in order to drive between jobs and as I had a driving licence I accepted the job. On 19 September 2007, I gave notice to G4S that I would be leaving the company and was given a departure date of 27 October 2017. ... I was given the court date of 11 October 2017 therefore I applied for Legal Aid and was appointed a lawyer on 2 October 2017. I met with my lawyer on 6 October 2017 and explained what had happened. It was on this occasion I discovered that I may be disqualified from driving. This concerned me as I had already given notice to G4S and needed my driving licence for my new job. Upon discussing the matter with my new employer, he has since confirmed that if I lose my driving licence he can only offer me part time hours as opposed to the full time hours I presently work. If this is the case then I will need to again seek alternative employment as I will not be able to support my family. As such, the impact of these ongoing proceedings is causing me ongoing worry and concern about my future." 21. The issue of detriment is one of fact, not law, but it only arises, of course, where there has been an unequivocal representation upon which the respondent has acted to his detriment. 22. It was argued on behalf of the Attorney General before the Assistant Magistrate that staying the prosecution and preventing the respondent from being properly prosecuted would damage the public's confidence by illustrating that the Attorney General was unable in fact to exercise his important supervisory powers over the Honorary Police, allowing the respondent to escape prosecution. Allowing the defendant to escape prosecution because of a faulty decision by the Centenier would lead to undermining public confidence in the proper administration of the criminal justice system and in particular, of the Parish Hall inquiry system. 23. The Assistant Magistrate, found that misconduct was not a necessary ingredient for an application to stay on the grounds of abuse of process under the second category in *Warren v Attorney General* and that there had been no executive misconduct in this case. In his view there had been no misconduct alleged in the case of *Attorney General v Bacon*. He said that this was not a case of "escaping prosecution" but of ensuring that the criminal justice system deserves the public's confidence. Quoting from his judgment:- "27 ... That confidence will come from the public knowing that our processes are accountable, fair and transparent, that our police officers are well trained and in receipt of proper guidance and that, if an error is made by an Honorary Police Officer, the Attorney General has and will use his supervisory power to address the situation. When a matter comes before the

Court the law will be applied openly and fairly. This application requires a decision as to competing public interests. The public must know that those accused of serious crimes will be tried and that executive misconduct will not undermine public confidence in the criminal justice system and bring it into disrepute. On the other hand, the Defendant had a legitimate expectation of finality and had acted upon the Centenier's decision when he resigned his cleaning position and obtained his driving job. It is a finely balanced decision but taking into account all of the matters referred to by counsel and in the Defendant's affidavit I found that, in the particular and very specific circumstances of this case, the prosecution should be stayed, as to allow it to proceed would offend the court's sense of justice and propriety."

Contentions of the Attorney General 24. These can be summarised as follows:- (i) The Assistant Magistrate failed to have any or any proper regard to the statement by counsel for the Attorney General that the decision of the Centenier was "wrong", not just merely "faulty". (ii) The Assistant Magistrate wrongly found that there was an unequivocal representation that the defendant would not be prosecuted, as no such representation was made. (iii) The Assistant Magistrate wrongly found that the defendant had acted to his detriment. (iv) The Assistant Magistrate was wrong in law to find that there was sufficient evidence to outweigh the heavy public interest in cases being prosecuted in circumstances where a decision had been made which the Attorney General regarded as plainly wrong. (v) The Assistant Magistrate was wrong to find that misconduct was not a necessary ingredient for an application to stay. (vi) The decision of the Assistant Magistrate wrongly undermines the Attorney General's statutory entitlement to direct a Centenier to prosecute when a Centenier has made a decision that is unsustainable. Contentions of the respondent 25. Advocate Dale, for the respondent, took issue with each of the grounds of appeal put forward by Crown Advocate Yates for the Attorney General, but I would emphasise the following:- (i) She made the point that this was an appeal on a point of law only. (ii) She said there was no executive misconduct in this case but executive misconduct was not a requirement, as found by the Assistant Magistrate. (iii) Whilst the Attorney General had the power to supervise and override a decision of the Centenier, it was subject to the checks and balances that the Court provides in ensuring that justice is done and ensuring the prosecution did not offend the Court's sense of justice and propriety. She referred to this passage from the judgment of Sir Michael Birt in *Attorney General v Bacon* :- "31 ... However, the fact that the Court considers the decision to be clearly wrong does not of itself entitle the Court to say that it would not be an abuse for the prosecution simply to change its mind and seek to correct the error 30 years later." Decision 26. Authorities on the relationship between the Court and the Attorney General were not before the Assistant Magistrate or before me at the appeal hearing, but it is helpful to be reminded by way of background to the decision. Quoting from the judgment in *Attorney General v Bojwani*

- [2010] JLR 1 at paragraph 20:- "It needs to be borne in mind, however, that the Court does not, and should not, appear to have any responsibility for the institution of prosecutions and the Court has no power to refuse to allow a prosecution to proceed merely because it considers that, as a matter of policy, it ought not to have been brought (DPP v Humphries (2)
- [1977] A. C.46), nor is the Court entitled to intervene and stay proceedings because it may take the view that the Attorney General is acting in a manner that it may regard as over zealous. That would be to substitute the Court's view of what is expedient in the public interest for the view of the Attorney General. That is no part of the Court's role (Trade & Indus. Secy. v Baker No 2 (18)
- [1999] 1 WLR a 1989)." 27. Sir Philip Bailhache, then Bailiff, said in Attorney General v R
- [1995] JLR 315 at page 321:- "Furthermore, in this jurisdiction, the responsibility for instituting criminal proceedings in this Court rests not with an amorphous government department but with Her Majesty's Attorney General. The indictment made against this defendant bears the signature of the Attorney General himself. We are confident that the Attorney General would have considered the propriety of these charges before the indictment was signed. It would be a serious matter to overturn the decision of the Bailiwick's senior Law Officer of the Crown on a matter which constitutionally lies within his province. That is not to say that it would never be done, nor that the Court does not have a duty to examine the matter on an application properly made. This was such an application, and it has been well argued by counsel for the defendant, but the Court must not forget that the discretion whether or not to institute criminal proceedings is vested in the Attorney General". 28. Crown Advocate Yates also referred me (but not the Assistant Magistrate) to this extract from the judgment of Lord Lowry in the House of Lords decision of Bennett v Horseferry Road Ct
- [1994] AC 1:- "I agree that prima facie it is the duty of a court to try a person who is charged before it with an offence which the court has the power to try and therefore that the jurisdiction to stay must be exercised carefully and sparingly and only for very compelling

reasons.

The discretion to stay is not a disciplinary jurisdiction and ought not to be exercised in order to express the court's disapproval of official conduct." 29. In my view, the Assistant Magistrate did err in law in the ways which follow. 30. In an application for a stay for abuse of process, the Court is concerned, under the second category in Warren v Attorney General , with protecting the integrity of the criminal justice system. "Integrity" means the quality of being honest and having strong moral principles and something therefore has to have occurred on the part of the police (or someone acting on behalf of or in league with the police) and/or the prosecuting authority which requires the integrity of the criminal justice system to be protected. 31. We are concerned, therefore, under the second category with misconduct of one kind or another. The word "abuse"

in this context means to use something for a bad purpose, namely to misuse the criminal process in a way which offends the Court's sense of justice and propriety. "Propriety" means behaviour considered to be correct and "impropriety" behaviour considered to be incorrect. It is difficult to think of circumstances where, under this second category, proceedings would be stayed even through the police and the prosecution had acted with propriety. 32. In his case stated, the Assistant Magistrate said there was no executive misconduct alleged in the case of *Attorney General v Bacon*, but I respectfully disagree. The misconduct in that case was the decision of the Attorney General to prosecute the defendant for alleged indecent assaults for which his predecessor as Attorney General had directed there should be no prosecution. Quoting from paragraph 30 of the judgment in that case:- "In my judgment, where the Attorney General directs that a matter should proceed by way of caution rather than prosecution, it would prima facie be an abuse of process to then bring a prosecution for the offence in question." The abuse referred to was on the part of the successor Attorney General in bringing a prosecution when his predecessor had directed there should be none. 33. In finding, as the Assistant Magistrate did, that there was no executive misconduct in the prosecution against the respondent, there can have been no conduct on the part of anyone involved in the prosecution that offended the Court's sense of propriety and no grounds for the Assistant Magistrate to intervene to protect the integrity of the criminal justice system. That suffices to dispose of the matter and to allow the appeal. 34. As can be seen from the extracts from the judgment above, the Assistant Magistrate, as did the parties before him, focused on the conduct of the Centenier, but that cannot be the conduct that is in issue here. Whether her decision was wrong or faulty, there was nothing abusive about the way she conducted herself; indeed her conduct of the matter led to there being no prosecution and therefore no process to stay. 35. It should have been the conduct of the Attorney General that was the focus of the respondent's application for a stay, on the basis that it was allegedly an abuse of his powers for him to direct that the respondent be prosecuted when the Centenier had disposed of the case by way of caution. 36. Notwithstanding the finding of no executive misconduct, by staying the prosecution as an abuse of process, the Assistant Magistrate can only have done so, in truth, on the basis of executive misconduct on the part of the Attorney General and in my view such a finding was not, in law, sustainable for the following reasons:- (i) It was agreed by counsel in the hearing before the Assistant Magistrate, and by the Assistant Magistrate, that the decision of the Centenier to deal with the case by way of caution was not made, and was not expressed by her as having been made, on behalf of the Attorney General. The power to charge is expressly reserved to Centeniers by Article 3(2) of the Honorary Police (Jersey) Law 1974 "without prejudice to the customary powers of the Attorney General in the prosecution of offences". It was a decision of the Centenier in her capacity as such and we are not, therefore in the territory of *Attorney General v Bacon* where the defendant in that case had been cautioned by the Centenier on the direction of the Attorney General himself. (ii) By the customary law of the Island, and pursuant to Article 4(3) of the Honorary Police (Jersey) Law 1974, the Attorney General has the power to override a decision of the Centenier and to direct that the respondent be prosecuted. It was put robustly in this way by the Court in the case of *Attorney General v Devonshire Hotel* :- "20 I cannot conceive that any person can have a legitimate complaint because the law has been correctly applied in his case. The power of the

formal charge of any person is without prejudice to the customary powers of the Attorney General. A member of the Force is able, after a Centenier has declined to charge a person, to refer the matter to the Attorney General who may give directions. That is the law of this Island. It is often said that ignorance of the law is no defence. How can a person justifiably complain if the law of the Island is correctly applied to him? The 'unfairness' complained of here is the fact that the law does enable a decision of a Centenier to be overturned. As Mr Day put it: 'So long as Centeniers are entrusted to assist the administration of criminal law, it would be ludicrous, farcical and unjust to have any procedures whereby their efforts are turned to nothing'. That is an argument which is tantamount to saying that a Centenier should be able to overrule the Attorney General. As a legal argument I reject it. As a political argument, it is a matter for the legislature, but I doubt it would find much favour." Advocate Dale suggested that this decision was now somewhat historic and accordingly not much weight should be placed upon it, but in my view it accurately reflects the position today. It is the law of the Island that a decision of a Centenier in relation to a prosecution can be overturned by the Attorney General. (iii) There was, accordingly, no unequivocal representation by or on behalf of the Attorney General, as in *Attorney General v Bacon*, that the respondent would not be prosecuted and it is the Attorney General who ultimately decides whether or not to prosecute. (iv) The respondent had no "legitimate expectation of finality". As the English Court of Appeal said in *R v Abu Hamza* :- "50 As the judge held, circumstances can exist where it will be an abuse of process to prosecute a man for conduct in respect of which he has been given an assurance that no prosecution will be brought. It is by no means easy to define a test for those circumstances, other than to say that they must be such as to render the proposed prosecution an affront to justice. The judge expressed reservations as to the extent to which one can apply the common law principle of 'legitimate expectation' in this field, and we share those reservations. That principle usually applies to the expectation generated in respect of the exercise of an administrative discretion by or on behalf the person whose duty it is to exercise that discretion. The duty to prosecute offenders cannot be treated as an administrative discretion, for it is usually in the public interest that those who are reasonably suspected of criminal conduct should be brought to trial. Only in rare circumstances will it be offensive to justice to give effect to this public interest." The respondent may have thought that being cautioned was an end of the matter, but in the light of the law of this Island, he can have had no legitimate expectation that this was the case. As the Court said in *Attorney General v Devonshire Hotel*, a person can have no "legitimate complaint because the law has been correctly applied in his case". (v) Whether it is in the public interest for the respondent to be prosecuted is a matter for the Attorney General and not for the Court. 37. There being no misconduct on the part of the Attorney General, the balancing exercise in the second category of *Warren v Attorney General* does not arise and there is no need to consider therefore the seriousness of the offence with which the respondent was charged, but in any event, it would be right to regard this as a serious offence, in that it carries with it a potential penalty of up to 2 years' imprisonment, an unlimited fine and a mandatory disqualification for at least 12 months unless special reasons apply. 38. In my view, the decision to stay the prosecution of the respondent, if left in place, would prejudice the ability of the Attorney General in the future to exercise his powers in relation to prosecutions. Advocate Dale suggested that it would not create

any kind of precedent, in that each case would depend on its own facts, and in particular, the way in which a defendant may have acted to his or her detriment would be bound to differ, but I disagree. The decision could be used as a platform to challenge any decision by the Attorney General in the future to overturn a decision of a Centenier in relation to a prosecution. 39. It might be argued, although the point was not developed by Advocate Dale, that this case can be distinguished from the facts in Attorney General v Devonshire Hotel in that the Court in that case was not called upon to consider the validity or otherwise of a decision to caution, as opposed to a decision not to prosecute. I was not provided with any authority on the status of a caution, and presume therefore that it simply means a warning that is recorded formally in writing, and which does not constitute a conviction (only courts can convict a person), but which might be taken into account when the person is convicted of a further offence. 40. In my view I can see no distinction between a decision by a Centenier not to prosecute at all or to issue a caution, in that either way the case is disposed of without a prosecution and it is over decisions to prosecute that the Attorney General has ultimate jurisdiction. 41. It is the case that in accepting the caution, a person admits the offence, and it would be unjust for that admission to be used against a person should the Attorney General subsequently direct a prosecution. I was assured by Crown Advocate Yates that the respondent's admission in this case would not be used against him should the prosecution be allowed to proceed and he enters a plea of not guilty. 42. In Attorney General v Devonshire Hotel, the Court made this suggestion:- "I do recognise, however, that a person, ignorant of the law, and told by a Centenier that he will not be prosecuted and lulled into a false sense of security because, as Mr Day puts it, he 'goes away believing he has got away with it' may then suffer a shock on the reversal of the decision by a direction from the Attorney General. The simple remedy to that is that a Centenier, when announcing his decision not to prosecute, whether or not he issues a caution, the validity or otherwise of which I am not called upon to decide, can inform the person concerned that the decision is without prejudice to the Attorney General's power to order a prosecution." 43. That explanation was not given to the respondent in this case, and there is no such explanation in the written caution which he signed. It is the case that such an explanation would ensure that people accepting a caution understand that under the law of Jersey, the decision of the Centenier can be overturned by the Attorney General. 44. I have no option, therefore, but to allow the appeal and set aside the finding that the prosecution of the respondent in this case constitutes an abuse of process, which means that the prosecution can proceed as directed by the Attorney General. I do, however, have some sympathy for the respondent, in that, having been cautioned, he was subsequently prosecuted, and having successfully applied for a stay of that prosecution, has had that stay appealed and now overturned. If he pleads, or is found, guilty, then this can no doubt be something that can be taken into account with other mitigation when sentencing, if and to the extent thought appropriate. Authorities Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949. Road Traffic (Jersey) Law 1956. AG-v-Bacon

[2016] JRC 181 . Warren-v-AG

[2011] JLR 424 . R v Abu Hamza

[2007] 1 Cr. App. R.27. AG v Devonshire Hotel Limited [1987-88] JLR 577. Honorary Police (Jersey) Law 1974. Attorney General v Bojwani

[2010] JLR 1 . Attorney General v R

[1995] JLR 315 . Bennett v Horseferry Road Ct [1994] AC 1. Page Last Updated: 03 May 2018
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