

JERSEY / JUDGMENT

AG v Whelan [2001] JRC 98 (04 May 2001)

[2001] JRC 98

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application to review a decision of the Relief Magistrate to refuse bail on 23rd April 2001. The brief background is that this applicant first appeared before the Magistrate's Court on 11th September, 2000 to face three charges, of which one now remains. He was remanded on a warning to 11th October. 2. It is alleged that, in the meantime, he committed three further offences on 7th October. He has pleaded not guilty to those offences. He did not appear before the Magistrate's Court on 11th October and his arrest was ordered. He was then presented before the Magistrate's Court on 2nd January, when the case was put off to 31st January. On 31st January he failed to appear again and his arrest was ordered. He next appeared before the Court on 26th February when he faced a further group of charges, some eight in all, the most serious being one of grave and criminal assault in that it was alleged that he had driven off in his car when a police officer was attempting to speak to him and had dragged the officer for a short while. There were a number of other related offences including dangerous driving, a breathalyser offence and other motoring offences. 3. The prosecution objected to bail on the grounds that the applicant had committed further offences whilst on bail and there was also a likelihood of his not appearing for trial. Certainly from the papers which we have seen, there were reasonable grounds for concluding that the applicant might not appear for trial because he had failed to appear on two previous occasions, although Miss Sowden has explained to us that there had been a misunderstanding on these two occasions. 4. Alternatively, the Relief Magistrate might have come to the conclusion that bail should be refused on the grounds of a likelihood to re-offend, on the basis that, on the prosecution case, the applicant had committed two further sets of offences whilst on bail and even on the applicant's version, he had committed some further offences on bail, namely some of those to which he has now pleaded guilty in relation to the events of 23rd February. 5. But, the Relief Magistrate did not base his decision on either of those points. He concluded that the applicant faced a charge of grave and criminal assault and that the penalty, if he were to be convicted, would undoubtedly be a prison sentence. This meant that there was a risk that the defendant would not answer to bail, because of the risk of a custodial sentence. In doing so he felt that the case raised an issue of principle, because of the change of practice in the Magistrate's Court. In the past, when there was no prosecutor, the Magistrate would receive all the papers and could, therefore, assess the strength, or weakness, of the prosecution's case. Nowadays, the Magistrate is in the same position as this Court has always been and as courts in England and other jurisdictions have been, namely that he has to rely on

the prosecution's summary of the case. 6. The Relief Magistrate took the view that he, therefore, had to accept the prosecution's view of the strength of the case and could not consider any defence observations on it. Indeed, the transcript shows that when Miss Sowden sought to raise points of this nature, the Relief Magistrate dissuaded her from pursuing it, saying that he was only concerned, at that point, with the police perception. The Relief Magistrate was clearly concerned about this and felt that he would like guidance from the Royal Court. 7. In our judgment the Magistrate erred in adopting this approach. As we have said, we think that the procedure to be followed in the Magistrate's Court is now the same as it has always been in this and other Courts. The prosecution will outline, probably from a short summary the general nature of the case. It is open to the defence to make any observations that they wish, to show that the case is not strong. 8. We wish to emphasise that a bail application is not a case for a mini trial and we note that, on this occasion, the police officer was called to give evidence at an early hearing. That would not normally be appropriate unless it was the only convenient method for the Magistrate to ascertain what the case was about in general terms. 9. In general, if all the defence have to say is that they dispute the prosecution case and will be saying something different, that does not take the matter very far. The Court is faced with a charge. It is entitled to assume that the prosecution have reasonable grounds for bringing the charge. But, we emphasise that the defence can make points. For example, if the case turned on identification, and there was only one witness, who had not attended an identification parade and had only seen the victim for a fleeting moment, it could clearly be open to the defence, in those circumstances, to say that the only evidence was of that nature and it was, therefore, very weak, and this should be weighed in the balance. And the Court would, in those circumstances, weigh it in the balance. 10. We have considered whether to deal with the matter ourselves, but we think that the better course is to send it back to the Magistrate, so that he can hear any points that Miss Sowden wishes to make in relation to the strength of the case, but we emphasise that a general traverse of the prosecution case is unlikely to advance the applicant's case very far. 11. Accordingly, we remit the matter to the Magistrate, to consider all the matters afresh, in the light of this judgment. Authorities *In re Douglas* (1987-88) JLR N.10 A. *G.-v-Skinner* (24th June 1994) Jersey Unreported; [1994/127]. Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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