

JERSEY / JUDGMENT

Bell v AG [2001] JCA 151 (19 July 2001)

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COURT
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BEFORE
R. C. Southwell Esq., Q. C., President;
The Hon. M. J. Beloff, Q. C., and;
C. S. C. S. Clarke,
Esq., Q. C.
Andrew Richard Bell
-v-
The Attorney General
Application of Andrew Richard Bell for
leave to appeal against his conviction on 1st
December, 2000, at a Criminal
Assize, following a not guilty plea entered before
the Inferior Number of the

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COURT OF APPEAL
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Before:
R. C. Southwell Esq., Q. C., President;
The Hon. M. J. Beloff, Q. C., and;
C. S. C. S. Clarke,
Esq., Q. C.
Andrew Richard Bell
-v-
The Attorney General
Application of Andrew Richard Bell for
leave to appeal against his conviction on 1st December, 2000, at a Criminal
Assize, following a not guilty plea entered before the Inferior Number of the

Royal Court on 30th June,
2000, to:
1 count of:
Possession or control of explosive
material without lawful excuse, contrary to Article 4 of the Loi (1884) sur
les Matières Explosives (count 1).
[On 1st December, 2000, two co-accused were acquitted at
the Criminal Assize of the same charge: counts 2 and 3 of the indictment.]
The application for leave to appeal placed directly before
the plenary Court without first being submitted to a Single Judge for
consideration and determination.
Advocate A. D. Hoy for the Appellant.
N. M. Santos Costa, Esq., Crown Advocate;

JUDGMENT

BELOFF JA: This is the judgment of the Court. 1. On the 30 th November 2000, after a trial lasting four days, before Mr. Commissioner Robert Harman QC and a jury, the Appellant, Andrew Bell, was convicted of committing the offence of possessing explosive material, namely, petrol bombs, without lawful excuse, contrary to Article 4 of the Loi (1884) sur les Matières Explosives . 2. The jury reached opinions in respect of the Appellant's co-Defendants, Messrs Tucker and Coen, who faced separate counts in identical terms, which were insufficient to convict, and formal verdicts of not guilty, pursuant to Article 43 of the Loi (1864) Régplant la Procédure Criminelle , were pronounced. 3. Article 4 of the substantive law provides in the material part: "Quiconque tiendra en sa possession ou à sa disposition aucune matière explosive, sous des circonstances qui soient de nature à faire soupçonner qu'il l'a en sa possession ou à sa disposition, dans un but non légitime, ... sera censé coupable de crime." 4. The law appears to be modelled on s.4 of the Explosive Substances Act save that the adverb "knowingly" qualifies the concept of possession or control in the English statute. This, however, is a distinction without a difference, since, consistent jurisprudence in Jersey and in England establishes that knowledge is a necessary, if not sufficient, ingredient of possession. 5. In his summing up the learned Commissioner said this: "..... possession does not necessarily involve ownership A person is in possession of something which is in his physical custody or under his control. Mere knowledge that an article is in a particular place is not sufficient. And it is not enough to show mere acquiescence in a situation, even where there may be knowledge. The prosecution must prove so that you feel sure about it that the accused whose case you are considering exercised actual custody or control over these petrol bombs. It is necessarily, you will appreciate, a matter of inference and the prosecution invite you to draw that inference from the relationship which each is said to have had with the motorcycle club premises and his recent presence at and around the premises. The case against each Defendant must be considered separately. You have already been told that it means that you can return verdicts of not guilty against each Defendant, guilty against each Defendant or guilty against one and not guilty against another. That is the situation to be remembered at all times." 6. It is notable that no attack is made on this direction in law. The learned Commissioner correctly identified

- (i) the distinction between ownership and possession (ii) knowledge as an element of possession (iii) the fact that possession must be of the offending object - here the petrol bombs (iv) the distinction between acquiescence, even accompanied by knowledge, and possession. 7. The learned Commissioner also reminded the jury of the need to consider each Defendant's case separately - a matter to which their distinctive verdicts showed they paid heed - and that the prosecution case was based on inference, not admission or direct evidence. Inference is, of course, an adequate basis for a jury verdict in this context, as long as the burden and standard of proof, also naturally drawn to the jury's attention by the Commissioner, are borne in mind: see R -v- McNamara (1998) Crim. L. R. 278 CA. 8. The Court of Appeal (Jersey) Law 1961 Article 25 entitles this Court to allow an appeal, inter alia , "if it thinks that the verdict should be set aside on the ground that it is unreasonable or

cannot be supported having regard to the evidence or that on any ground there was a miscarriage of justice." The Court must dismiss an appeal if none of these criteria (or that of legal misdirection) are satisfied, and may do so, even if they are, if no substantial miscarriage of justice, has, in its view, occurred. 9. This test is not identical to that of the English Criminal Appeal Act 1968 s.2 which introduces a distinct test of an "unsafe conviction" and is the foundation of the well-known invocation of the "lurking doubt" criterion (R -v- Cooper

(1969) 1QB 267 at p.271). Although the Appellant's contentions refer to this criterion, we must base ourselves on the language of the 1961 Jersey law. On any view a jury verdict is not lightly to be displaced; and a contention that a jury verdict admittedly unaffected by misdirection of law or other material irregularity, is unreasonable or unsupported by evidence, is no easy one for an Appellant to sustain. 10. The Appellant's counsel made at the trial an unsuccessful submission of "no case to answer". Since the Appellant gave and adduced no evidence, it would have been logical for the Commissioner's ruling itself to be the subject of appeal: (see the analogous case of R -v- McNamara

(1998) Cr. L. R. 278 CA). However, notwithstanding this procedural oddity, we shall treat the appeal against the jury verdict on its own merits. 11. The prosecution case rests on ten indisputable and ultimately undisputed

facts.

(1) The Appellant had a key to premises at Nos. 7, 8 and 9 Union Court. (2) The Appellant lived at No. 7. (3) Nos. 7 and 8 were physically inter-connected. (4) The Appellant frequently came and went from all three premises. (5) No. 8 was a clubhouse used by a motorcycle gang known as the 'Islanders'. (6) The Appellant was a full member of the club and not merely a so-called "prospect" or prospective member. (7) The clubhouse was fortified. (8) 15 petrol bombs were found at Nos. 8 and 9. (9) The petrol bombs, at any rate those in the rear courtyard between Nos. 7 and 8, were clearly visible (save as to some of them when the door into the yard was open). (10) On at least one occasion the Appellant went from No. 8 to No. 7 in circumstances in which he must have seen at least some of the petrol bombs. 12. Advocate Hoy attacked the legitimacy of the jury verdict on two overlapping bases: first that the admitted facts were by themselves inadequate to sustain an inference that the Appellant was in possession or had control of the petrol bombs; secondly there was no reason to infer that he (as distinct from other club members) had such possession or control. 13. The Court finds itself unable to accept this submission. It seems to it that the jury was entirely reasonable in their assessment of the evidence. The Appellant's relationship to the premises both as occupant of and recurrent visitor to them, his status as full member of the club and necessarily associated role as participator physically in its decisions, his awareness of the obvious presence of the petrol bombs (a presence vividly demonstrated in the photographs taken by the police) all justified the jury's conclusion that, whatever may have been the position in relation to other club members, he at least was guilty of the offence charged. The

jury were entitled to recognise the significance of the fortification of the clubhouse as indicative of the state of mind of club members (whether well founded or no) as to the club's vulnerability to assault from outside. 14. Advocate Hoy sought to segment the items of evidence relied upon by the prosecution from each other, and to argue that each was inadequate to sustain the charge. The jury's function, as we see it, was to consider the effect of the evidence cumulatively and, for the reasons given, we cannot fault their conclusion. We repeat that their ability to discriminate between the Appellant and the other Defendants is proof of the care with which they approached their task, as well as being destructive of Advocate Hoy's second line of attack. 15. Advocate Hoy also criticised the form of the indictment. The Court found this criticism not altogether easy to appreciate. The Defendants might in theory have been charged as joint possessors (e.g. R -v- Searle

(1971) Cr. L. R. 592). In fact they were charged separately. The prosecution dealt separately with the case against each: the Commissioner specifically reminded the jury, as we have already observed, to treat each Defendant separately; and the jury manifestly did so. There is, on analysis, nothing in this point. 16. Advocate Hoy withdrew his criticism of the Commissioner's decision to allow adduction of evidence of police surveillance of the premises. The Commissioner was clearly right to hold such evidence as relevant as illustrating the nature and degree of the Defendant's association with these premises. 17. Advocate Hoy also withdrew his suggestion that there had been a miscarriage of justice in that his ability to prepare the case was hampered by prosecution tactics, and to present it was hampered by judicial pressure. The Court was utterly unable to detect in the transcript or otherwise that the Commissioner had in any way indicated that there were time constraints on the trial. On the contrary he had at all times been responsive to requests by counsel for adjournments. We regret that any such criticism of the Commissioner, now accepted to be wholly unwarranted, ever appeared on the face of the Appellant's contentions. 18. The application for leave to appeal will accordingly be dismissed. Authorities R.-v-Cooper

(1969) 1 QB 267 CA. R.-v-McNamara & McNamara [1998] Cr. L. R. 278 CA. Loi (1884) sur les Matières Explosives. R -v- Searle (1971) Cr. L. R. 592 Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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