

JERSEY / JUDGMENT

Benyoucef -v- AG [2015] JRC 240 (25 November 2015)

[2015] JRC 240

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal by way of case stated against a decision of the Assistant Magistrate on 4th April, 2015, finding Elias Campbell Benyoucef ("the appellant") in breach of his bail conditions, revoking his bail, and remanding him in custody.

Background

2. The appellant is 18 years of age. His first appearance before the Magistrate's Court in this case was on 2nd March, 2015, when he was charged with one count of common assault and one count of grave and criminal assault. The counts were factually unconnected. 3. He reserved his plea to the common assault, pleaded not guilty to the grave and criminal assault and was released on conditional bail by the Magistrate. Conditions were imposed relating to residence, not to contact any prosecution witnesses and to abide by a curfew between the hours of 10pm and 7am. 4. On 23rd March, 2015, the appellant pleaded guilty to the charge of common assault and not guilty to the charge of grave and criminal assault. On the same occasion the Magistrate accepted jurisdiction and ordered that bail would continue on the same terms and that a trial date should be fixed. 5. On 17th March, 2015, the appellant was dealt with by the Relief Magistrate for a breach of his bail conditions by breaching curfew. He admitted that breach, was given words of advice and bail was renewed. 6. On 17th April, 2015, a further allegation was made that the appellant had again breached his bail conditions and it is the decision taken by the Assistant Magistrate in connection with that allegation that is the subject matter of this appeal. The appellant was found to have breached his bail conditions, his bail was revoked and he was remanded in custody. 7. On 20th April, 2015, the Assistant Magistrate, on his own motion, released the appellant on bail on the same terms as had previously applied. Accordingly this Court was not asked to examine the Assistant Magistrate's decision on the basis that the appellant was in custody but rather on the basis that, because the Assistant Magistrate had made a finding that the appellant had been in breach of his bail conditions, the appellant's record would reflect that he did not respect the conditions of his bail and he might therefore, on any future occasion, be prejudiced in any application for bail. The hearing before the Assistant Magistrate 8. The information before the Assistant Magistrate in support of that alleged breach was in the

form of two witness statements, one from Witness A of the 14 th April, 2015, signed some 10 days after the alleged breach occurred and the second from Witness B also signed on 14 th April, 2015. The allegation against the appellant was to the effect that he had breached the terms of his bail because he had been seen at an event at Fort Regent on 4 th April, 2015, after 10pm contrary to his conditions of bail. Both of the witnesses stated that they knew the appellant well enough to recognise him and both confirmed that they saw him at Fort Regent after 10pm on th April. In particular, Witness B indicated that she knew the appellant well as she went to Highlands College and would see him around. She stated that she once gave him a lift and dropped him off near to Greenfields. She described an exchange with him on 4 th April in which she asked him whether or not he was supposed to be on a curfew and stated that he looked "shocked" and "pretty scared" and ran away. 9. Both of the witness statements were made pursuant to the provisions of Article 9 of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998 ("the 1998 Law") and, significantly, both contain immediately above the signature of the witness in each case the following statement:- "This statement consisting of page(s), each signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true". 10. The Assistant Magistrate had read those statements prior to the hearing on 17 th April, 2015. The hearing commenced with the Assistant Magistrate asking the appellant's counsel whether he had seen the statements and the appellant's counsel confirmed that he had not. It appears that the appellant's counsel was unaware of the nature of the allegations against his client and the Assistant Magistrate made the statements available to him and there was an adjournment to enable the appellant's advocate to discuss the contents of the statements with his client. 11. When the case resumed, the Assistant Magistrate asked the appellant's advocate whether or not the breach was admitted and the appellant confirmed through counsel that it was not admitted. The Assistant Magistrate was informed that the appellant denied being at the event in question and that he had two witnesses who would confirm that they were in his room with him on that occasion. He also denied knowing Witness B. 12. The Assistant Magistrate reminded himself that the appellant had previously breached curfew and that the breach on that occasion had been dealt with by words of advice. The Assistant Magistrate then indicated, particularly in the light of the unequivocal nature of the statement of Witness B, that he was satisfied that a breach had been committed and that because it was the appellant's second breach, he was minded to remand him in custody until the following Monday when a pre-trial review was already scheduled. 13. The appellant's advocate urged the Court not to take that course of action. Amongst the points made by the appellant's counsel to the Assistant Magistrate were the following:- (i) The onus was on the prosecution to prove that the appellant was at the event and in breach of his bail conditions. (ii) The Court should not make a decision on the basis of a written statement when the contents are not admitted. (iii) The appellant should at the very least be allowed to challenge what the witnesses say. (iv) The appellant should have the opportunity to call both of the individuals who could give evidence as to his whereabouts at the time. 14. The Assistant Magistrate retired to consider the matter. On his return he made reference to the

statements that he had seen and the unequivocal nature of Witness B's statement noting that she was a witness after the event to the allegation of grave and criminal assault against the appellant. He further noted that this was not a question of having a trial and that there was no prosecution for breaching his curfew. He concluded on the information that he had been given that there was "a clear breach of the curfew and I am concerned that you appear to be flouting the Court's order." 15. He then considered whether or not bail should continue. He indicated that he was concerned about the risk of further offences and made reference to the presumption in favour of granting bail, referring to it as a presumption that can be rebutted in such circumstances. The Magistrate remanded the appellant in custody until the following Monday which was, as I have said, scheduled for a pre-trial review of the appellant's case. The grounds of appeal 16. In essence the appellant argues that by finding him to be in breach of bail conditions and remanding him in custody, the Assistant Magistrate:- (i) Made an error of law in allowing evidence to be adduced against the appellant without following the procedure set out in Article 9 of the 1998 Law; (ii) Acted in excess of his jurisdiction by derogating from the provisions of Article 9 of the 1998 Law when he was in fact bound to apply and follow them; (iii) Made an error in law by not permitting the appellant any opportunity to cross-examine the deponents of the statements thereby denying the appellant due process in breach of Article 6 of the European Convention on Human Rights ("ECHR"); (iv) Made an error in law by not permitting the appellant any opportunity to give evidence on oath or to call any supporting evidence in support of his denial of the alleged breach of bail thereby, similarly, denying the appellant's rights under Article 6 ECHR; and (v) Acted in excess of jurisdiction by remanding the appellant into custody thereby depriving him of his liberty in contravention of his rights as guaranteed by Article 5 ECHR. The relevant law and arguments 17. Article 9 of the 1998 Law is, insofar as may be relevant, in the following terms:- "9 Admissibility of written statements as evidence

- (1) Where the conditions in this Article are satisfied, a written statement by any person is admissible as evidence in any criminal proceedings to the same extent as if it were oral evidence to that effect by that person.
- (2) In every case -
 - (a) the statement shall purport to be signed by the person who has made it;
 - (b) the statement shall contain a declaration by that person to the effect that it is true to the best of the person's knowledge and belief and that the person made the statement knowing that, if it were tendered in evidence, the person would be liable to prosecution if the person wilfully stated in it anything which the person knew to be false or did not believe to be true;
 - (c) before the statement is tendered in evidence, a copy shall be served, by or on behalf of the party proposing to tender it, on each of the other parties in the proceedings; and
 - (d) none of the other parties or his or her advocate, within 7 days after being served with a copy, shall have served on the party proposing to tender the statement a notice in writing that the other party objects." 18. The preamble to the 1998 Law states:- "A LAW to provide in criminal

proceedings for formal admissions of facts; for notice of alibis; for matters relating to the admissibility of expert evidence; for the reading of written statements and depositions as evidence; and for other purposes." 19. The appellant argues that Article 9(2)(c) of the 1998 Law requires that before a statement can be tendered in evidence it must be served on all parties in the proceedings. The statements in this case were not served on the appellant or those representing him before they were tendered in evidence and therefore prima facie there had been a breach of those provisions. 20. The appellant further argues that Article 9(2)(d) of the 1998 Law allows a party who wishes to object to the statement 7 days to provide such objection in writing. The appellant clearly did not have 7 days. 21. The appellant therefore concludes that because the provisions set out above were not met, the statements could not be admitted in evidence against the appellant. In further support of this argument the appellant cites Article 1 of the Loi (1853) Etablissant La Court Pour La Répression Des Moindres Délits ("the 1853 law") which is in the following terms:- "Le Juge de la Cour pour le Recouvrement de Petites Dettes, siégera 4 jours la semaine, et plus s'il est nécessaire, à 10 heures du matin, dans un local désigné par les Etats, afin d'entendre et juger les Causes de Police qui peuvent être traitées et jugées sommairement, et dont la punition n'excédera pas £5 d'amende ou 8 jours d'emprisonnement. Il entendra les témoins dans les causes plus graves où le prévenu aura été saisi, afin de décider s'il y a lieu à le détenir en prison, ou s'il doit être libéré, ou s'il doit être admis à caution ; dans ce dernier cas, le Juge fixera le montant du cautionnement qui devra être fourni." 22. That provision, so the appellant submits, requires the Magistrate in more serious cases to hear evidence whether or not to remand a defendant into custody or release him on bail. That requirement is mandatory. 23. If the appellant is right in his argument, the effect is that whenever bail is disputed then it will be incumbent upon the Magistrate to hold a hearing with evidence admissible under in Article 9 of the 1998 Law. One can readily see that, were this to be a correct interpretation, a Court could face a succession of hearings to determine questions of bail in which statements would need to be served and agreed and which could render the entire procedure before the Magistrate's Court, or indeed, by extension, before the Royal Court, unworkable. 24. In my judgment, however, a correct application and interpretation of these provisions does not lead to the conclusion argued for by the appellant. 25. As set out above, the preamble to the 1998 Law makes it clear that it is concerned with "criminal proceedings" and indeed the express words of Article 9(1) makes it clear that it is dealing with the admissibility of evidence in "any criminal proceedings". The 1998 Law is focussed on dealing with what evidence would be admissible at trial which, of course, is the determination of guilt or innocence. For example, it provides for the making of formal admissions; for the admissibility of expert evidence; for (as in Article 9), the reading of statements as evidence; the giving of evidence through television links; and for other matters ancillary to the trial of guilt or innocence. It is not, to my mind, intended to apply to interlocutory matters and in particular not to matters of bail which, as the Crown argues, are often of their nature urgent. In my judgment issues relating to bail are interlocutory matters within criminal proceedings but are not of themselves criminal proceedings attracting all of the protections and provisions of the criminal law that are there to deal with the ultimate resolution of the issue

before the Court, namely the guilt or innocence of an accused person. In my judgment, therefore, the 1998 Law does not apply to matters of bail. 26. Similarly it does not appear to me that Article 1 of the 1853 Law is necessarily at odds with the reliance by the Magistrate on information that appears to him to be sound and worthy of belief when considering an application for bail. The laws relating to the admissibility of evidence and practice before the criminal courts of the Island have altered significantly since 1853. Were that Article to be given the interpretation argued for by the appellant, this would require the Magistrate to hear evidence in connection with bail even were there no dispute or were, for example, the charge to be so serious that the outcome of any bail consideration would be inevitable. It seems to me that the best interpretation of Article 1 of the 1853 Law is that it requires the Magistrate to be satisfied that there is evidence to support the underlying charges so that he then may consider whether or not it is appropriate initially to admit an accused to bail. That Article does not, in my judgment, require the Magistrate to hear evidence concerning any allegation of a breach of bail. That is not to say he cannot do so

- merely that he is not required to do so by Article 1 of the 1853 Law. 27. I am supported in this view by the case of *AG v Whelan* 2001/098 in which the Court, in considering an initial application for bail, emphasised that a bail hearing was not a case for a mini trial. At paragraph 7 of the judgment the Court said this:- "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." 28. Although, as I have said, in that case the Court was considering an initial application for bail it seems to me that the same principle applies for any time when bail falls to be considered. It is not a matter for a mini trial. It is rather a matter for an assessment by the Court of the material then before it against the well understood principles that apply to the grant, refusal or revocation of bail. 29. Further support may also be found in *Archbold Criminal Pleading Evidence and Practice* (2015 Edition) at paragraph 3-50 in which, when dealing with provisions under the Bail Act 1976 the learned authors say:- "The procedure provided for by Section 7(5) does not involve the determination of a criminal charge within Article 6(1) of the ECHR....; and Article 5 ... neither requires that the underlying facts relevant to the Justice's decision need to be proved to the criminal standard, nor that the justice should be restricted to the consideration of admissible evidence. All that was necessary was that the Justice, when forming his opinion, took proper account of the quality of the material upon which he was being asked to adjudicate, and afford of the defendant a proper opportunity to answer the material, by being allowed to cross-examine any witness who gave oral evidence and by being able to give evidence in person." 30. Section 7(5) deals with the powers of a Magistrate in dealing with someone who has been brought before him if the Magistrate forms the view that that person is not likely to surrender to custody or "has broken or is likely to break any condition of his bail". Articles 5 and 6 ECHR 31. Arguments were addressed to me to the effect that the Assistant Magistrate had infringed the appellant's rights protected by Articles 5 and 6 ECHR. 32. Article 5 ECHR

provides so far as appears relevant as follows:- "1. Everyone has the right to liberty and security of person. No-one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order or a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d)". 33. In the case before the Queen's Bench Division of the High Court of Justice, of *DPP v Havering Magistrates Court* and others

[2001] 1 WLR 805 the Court, considering the applicability of Article 5 ECHR to bail under the Bail Act 1976, said this at paragraphs 38 et seq:- "38. Proceedings under s. 7(5) are by their nature emergency proceedings to determine whether or not a person who was not considered to present the risks which would have justified remanding in custody in the first instance, nonetheless does now present one or other of those risks. It is true that a literal reading of s. 7(5) could lead to the conclusion that the mere fact of a breach of condition could justify detention. But it should be noted that such a finding only gives the justice the power to detain, and not the duty to detain. It seems to me that in exercising that power, the justice would not be entitled to order detention by reason simply of the finding of breach; that in itself is not a justification for the refusal of bail under paragraph 2 of Part 1 of the Schedule to the Act. To hold that a breach of a condition, was, ipso facto, a ground for detention, would, it is agreed by all parties, be a decision taken on a ground outside the purposes which the European Court of Human Rights has determined justify detention under Article 5. The fact of a breach of condition may be some evidence, even powerful evidence, of a relevant risk arising. But it is no more than one of the factors which a justice must consider in exercising his discretion under s. 7(5). 39. It seems to me, that the justice is simply required by the statute to come to an honest and rational opinion on the material put before him. In doing so, he must bear in mind the consequences to the defendant, namely the fact that he is at risk of losing his liberty in the context of the presumption of innocence. This was the view of this court in *R -v- Liverpool Justices*. Article 5 does not, in my judgment require any different approach. None of the cases which have been cited to us suggest that the provisions of Article 5 include a requirement that underlying facts relevant to detention are to be proved to the criminal standard of proof. This is not surprising, bearing in mind the delicate exercise on which the court is engaged in this type of jurisdiction, in seeking to provide fairness to the defendant on the one hand, but securing the objectives of justice and the protection of the public during the period up to and including trial on the other. 40. From the decisions in *R -v- Liverpool Justices*, *Re Moles* and *R -v- Mansfield Justices* [supra] it is clear that the material upon which a justice is entitled in domestic law to come to his opinion is not restricted to admissible evidence in the strict sense. Lord Lane describes the common

practice of the relevant material being presented by a police officer. I see nothing in either Article 5 itself, or in the authorities to which we have been referred, which suggest that, in itself, reliance on material other than evidence which would be admissible at a criminal trial would be a breach of the protection required by Article 5. It is true that the European Court of Human Rights on occasions refers to the need for evidence; but that is used in contra-distinction to mere assertion. It does not seem to me that any of the authorities to which we have been referred assist in determining the nature of that "evidence". Bearing in mind the differences in the rules for admissibility of evidence in the different jurisdictions of the Member States, it is perhaps not surprising that the court appears to have left resolution of that question to domestic law. 41. What undoubtedly is necessary, is that the justice, when forming his opinion, takes proper account of the quality of the material upon which he is asked to adjudicate. This material is likely to range from mere assertion at the one end of the spectrum which is unlikely to have any probative effect, to documentary proof at the other end of the spectrum. The procedural task of the justice is to ensure that the defendant has a full and fair opportunity to comment on, and answer that material. If that material includes evidence from a witness, who gives oral testimony, clearly the defendant must be given an opportunity to cross-examine. Likewise, if he wishes to give oral evidence he should be entitled to. The ultimate obligation of the justice is to evaluate that material in the light of the serious potential consequences to the defendant, having regard to the matters to which I have referred, and the particular nature of the material, that is to say taking into account, if hearsay is relied upon by either side, the fact that it is hearsay and has not been the subject of cross-examination, and form an honest and rational opinion. If his opinion is that the defendant has broken a condition of his bail, he must then go on to consider whether or not, in view of that opinion, and in all the circumstances of the case, he should commit the defendant in custody or grant bail on the same or other conditions, applying the principles set out in section 3(6) and 4 of, and Schedule 1 Part I paragraph 2 (in Part II paragraph 2) to the Act. If that course is taken, I cannot see how the procedure could be said to be in breach of Article 5." 34. The relevance of Article 5 ECHR to bail in Jersey has been accepted by the Royal Court in the Attorney General v Evans and Others

- [2011] JRC 199 , in which Bailhache, Deputy Bailiff as he then was, stated:- "9. Decisions as to whether to grant or refuse bail are not governed in Jersey by statute, unlike in the UK where we understand such decisions are generally governed by the Bail Act 1976. Nevertheless, there are two recent statutes which bear generally on the question of bail. Article 97 of the Extradition (Jersey) Law 2004 is headed "Presumption in favour of bail" and directs the Court in an extradition case to grant bail pending determination of the case unless there are particular substantial grounds for not doing so. Furthermore the Human Rights (Jersey) Law 2000, which came into force on 10th December, 2006, requires that issues of bail are considered in a convention compliant way. Article 5 of the Convention insofar as it is relevant for today's purposes provides: 1) Everyone has the right to liberty and a security of person. No one shall be deprived of his liberty save in the following cases

and in accordance with the procedure prescribed by law: a. The lawful detention of a person after conviction by a competent court... ... c. The lawful arrest or detention of a person effective for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; 10. Before leaving Article 5, we mention also: "3. Everyone arrested or detained in accordance with the provisions of paragraph 1C of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to a trial within reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial." 11. ... 12. The right to liberty conferred by Article 5(1) of the Convention does not prevent the detention of a person pending trial because there is specific qualification of the right to liberty in that context, but the starting point nonetheless remains that the right to liberty exists. Another way of putting that is that there is a presumption of bail. It is for the prosecution to establish that one or more of the legitimate objections to bail exists." 35. It is clear that a presumption exists in favour of the grant of bail. It is, however, a rebuttable presumption and is rebutted if the Court forms the view, having considered the material before it, that there are sufficient grounds to refuse bail. 36. In terms of the relevance of Article 6 ECHR to matters of bail, I do not think that I need go further than refer to the case of *Al-Khawaja v United Kingdom*

[2012] 54 EHRR 23 in which, in commenting on the applicability of Article 6 ECHR the Court said this:- "The general principles: 118. The Court recalls that the guarantees in para 3(d) of Art 6 are specific aspects of the right to fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. In addition, the Court's primary concern under Art 6(1) is to evaluate the overall fairness of the criminal proceedings. In making this assessment the Court will look at the proceedings as a whole having regard to the rights of the defence but also to the interest of the public and the victims that crime is properly prosecuted and, where necessary, to the rights of witnesses. It is also recalled in this context that the admissibility of evidence is a matter for regulation by national law and the national courts and that the courts only concern is to examine whether the proceedings have been conducted fairly. Article 6(3)(d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes a statement or at a later stage of the proceedings. A similar and long established principle exists in the common law of England and Wales." 37. It is clear that Article 6 ECHR applies to the overall criminal process and the overall fairness of the determination of the question of guilt or innocence. It does not, in general, inform the rules of evidence specifically nor the appropriate basis under which a court can proceed to deal with the interlocutory matters within a criminal process. In the circumstances it does

not seem to me that Article 6 ECHR applies to bail considerations unless it can be said that for some reason a decision relating to bail in any case has undermined the fairness of the process leading to the determination of guilt or innocence as a whole. That is not suggested in this case nor, on my understanding of the facts, could it be. Assistant Magistrate's Case Stated 38. In his case stated of 14 th May, 2015, the Assistant Magistrate explained the basis on which he had made the decision on 17 th April, 2015. Amongst the points that he made are the following:- "The process of considering whether to grant or refuse bail and/or to impose conditions upon bail is not a criminal trial. There is no offence of failing to comply with bail conditions and the Court has to deal with the issues of risk upon the basis of information that it has to hand at the time. I was presented with clear and credible statements of a breach and heard submissions from defence counsel. Those submissions included an assertion that the appellant would be able to provide two alibi witnesses. An analogy might be drawn with how the Court deals with initial bail applications. It will take account of the strength of the evidence against the defendant - for example in the form of Article 9 statements or police logs of call outs to a given property - and will make an assessment of the strength [of] the evidence, even when a defendant has pleaded not guilty and strenuously denies any involvement at all. The nature of a summary process is that the Magistrate's Court has to deal with matters as it sees fit with the limited information available to it. Assessing risk is not a precise science in this context. This was the second breach of curfew, a curfew that was imposed because the appellant faced two charges of assault committed in the night-time hours - the more recent of which he has admitted." 39. I agree with the characterisation of the nature of the consideration of the grant or refusal of bail set out by the Assistant Magistrate in the first paragraph quoted above. In my judgment, the assessment of bail is capable of being a summary assessment in which the Court in question operates from the rebuttable presumption that bail should ordinarily be granted and then assesses the material before it (which inevitably will in the vast majority of cases be untested and often not accepted by the accused) to see if the overall picture (including but not necessarily always limited to the questions of 1) whether or not the defendant would fail to attend Court as required; 2) whether or not the defendant would interfere with the evidence of witnesses or otherwise obstruct the course of justice; or 3) whether or not the defendant would offend whilst on bail) should lead to the grant or refusal of bail. The Court will often have regard to statements made in accordance with the provisions of Article 9 of the 1998 Law which, as I have said, contain the penal notice which assures the Court that the witness who signed the statement is aware of the consequences that may flow were they to make their statement knowing it to be untrue. Subject to what I say below this, it seems to me, is generally a sufficient evidentiary basis for the Court to consider questions of bail. 40. The issue of bail is an ongoing one. Bail can be refused and then subsequently granted in the light of a better understanding of the circumstances and, of course, the contrary is true. Its grant or refusal does not require the full safeguards and process that a finding of guilt or innocence requires. If that were the case it would theoretically be possible to have a sequence of mini trials (or indeed substantial trials) on the matter of whether or not bail previously refused

should be granted or bail previously granted should be withdrawn. This would be entirely disruptive to the criminal process and the interests of justice as a whole. Whereas bail determinations take place within a criminal process, they are not criminal proceedings.

41. Although in general the assessment of bail is a summary assessment and it will not normally be necessary to hear evidence, the Court can of course do so. A Court may take the view that in order to be fair to the accused and to better inform its assessment of risk it may wish to hear witnesses or receive additional material. Whether the Court feels the need to do this depends upon its assessment of the material before it at the time. 42.

Drawing the various points together it appears to me that the position is as follows:- (i) The 1998 Law is mandatory in its terms insofar as it relates to the admissibility of statements used in the final determination of guilt or innocence. However the 1998 Law does not apply to matters of bail which in general need to be dealt with summarily and sometimes urgently. (ii) Article 6 ECHR does not apply in bail applications as it is focussed, not on interim proceedings, but on the fairness of the criminal process leading to a determination of guilt or innocence as a whole. (iii) Article 5 ECHR does apply to bail but the law is as set out in *Havering* to the end that the judge considering bail has an obligation to come to an honest and rational opinion on the material before him, to bear in mind the factors which may undermine the credibility of that evidence and indeed be mindful of the effect of his deliberations on the accused. (iv) The material before the Court does not have to be limited to admissible evidence. It can go wider than that although all material upon which the court bases its decision must be subject to the same judicial reflection and scrutiny as to its quality, credibility and import before any decision can be based on it. (v) A determination of the grant or refusal of bail are not criminal proceedings, there is no finding of guilt and no penalty flows from that determination. It is an assessment by the judge of whether his perception of the risks which the refusal of bail is intended to mitigate has, in the light of the additional information, properly considered, alters to the detriment of the view that bail should be continued. Provided that the decision is taken on a reasonable basis and on the basis of proper information, then that is a sufficient basis to make such a decision. (vi) A bail argument should not be the occasion for a mini trial and whereas it is open to a court to hear from witnesses it is not incumbent upon it to do so provided it has material before it which, properly evaluated, can justify the decision that it makes.

Conclusion

43. In this case the Assistant Magistrate had before him two statements each made under the provisions of Article 9 of the 1998 Law. They were largely internally consistent and the Assistant Magistrate was entitled to take the view that they were cogent, credible and persuasive. He heard submissions from defence counsel that the breach was denied and that the accused had witnesses who might support him. 44. In the light of the evidence then before the Assistant Magistrate coupled with the fact that the matter was already listed for review on the following Monday, it was not unreasonable for the Assistant Magistrate in

these circumstances to remove bail temporarily notwithstanding the denial by the accused of the alleged breach of curfew. The Assistant Magistrate was not required at that point to hear from witnesses before making the decision that he did. Even had he felt the need to hear from witnesses, it was open to him to adjourn the matter, with bail temporarily removed, for that purpose if, on his assessment of the material before him, it was appropriate to do so. 45. There was nothing to prevent an application for bail being renewed on the following Monday, 20 th April, 2015, for which time, as I have said, the case was already listed. At that point the accused could have provided the material to enable the Assistant Magistrate to further review the question of bail. In any event, the Assistant Magistrate himself treated the matter as one for continual review and without any application by defence counsel, gave to the accused strong words of advice and then renewed bail. 46. In my judgment the actions of the Magistrate in withdrawing bail over the weekend, within the time available to him and the material before him, were reasonable and in accordance with the law and accordingly I dismiss this appeal. Authorities Criminal Justice (Evidence and Procedure) (Jersey) Law 1998. European Convention on Human Rights. Loi (1853) Etablissant La Court Pour La Répression Des Moindres Délits. AG v Whelan 2001/098. Archbold Criminal Pleading Evidence and Practice (2015 Edition). Bail Act 1976. DPP v Havering Magistrates Court and others [2001] 1 WLR 805. AG v Evans and Others

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