JERSEY / JUDGMENT

Cahours v AG [2001] JRC 253 (17 December 2001)

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JUDGMENT

THE BAILIFF: 1. This is an appeal by case stated by George Maurice Cahours against the refusal of the Assistant Magistrate to award him costs following the withdrawal of charges of common assault and being disorderly on licensed premises. The learned Assistant Magistrate set out the background to the decision under appeal with commendable clarity. 2. The appellant first appeared before the Magistrate's Court on 6 th March, 2000, when the case was adjourned to 3 rd April. On that day, the appellant failed to appear and his arrest was ordered. He had evidently left the jurisdiction and did not appear again until 9 th March, 2001, when the arrest order was rescinded and the appellant was again warned for his further appearance on condition that he reported weekly to the police station. There were then a number of further adjournments. 3. On 3 rd May, 2001, an adjournment was granted because the prosecution was not ready to proceed. On 30 th May, 2001, an adjournment was granted on the application of the defence as the appellant was unfit having been involved in a fracas the previous day. 4. On 5 th July, 2001, the trial was adjourned on the application of the prosecution, the investigating officer being absent on annual leave. 5. On 2 nd August, 2001, the trial was adjourned on the application of the defence as the appellant's children were in the Island. 6. On 4 th September, 2001, there was a further adjournment as prosecution witnesses were unavailable. 7. On 17 th October, 2001, on the day finally fixed for trial, the prosecution again applied for an adjournment because the investigating officer was away from the Island on annual leave. Unsurprisingly the Assistant Magistrate refused the application for an adjournment; the prosecution offered no evidence and the charges were accordingly dismissed. 8. Mr. Tremoceiro, who appeared for the appellant both in the Magistrate's Court and on appeal, applied for costs. The application was refused; the learned Assistant Magistrate stating: "In the circumstances, Mr. Tremoceiro, I am not going to grant costs and the reason that I do not grant costs is that I believe that there is an obligation both on the defence and on the prosecution to ensure that these things come before the Court at the earliest possible date and I do not believe, having regard to the history of that particular case, that sufficient effort was made either by the prosecution or the defence to make sure that the Court heard that contested case at an earlier date." 9. In his statement of case the learned Assistant Magistrate added that he understood that he had a discretion under the relevant provision of the Costs in Criminal Cases (Jersey) Law, 1961 and that he had declined to exercise

his discretion in a way which favoured either party. 10. Counsel for the appellant contends that the Assistant Magistrate was wrong to exercise his discretion in that way. The law is now well settled. In Romeril-v-AG (26 th March, 2001) Jersey Unreported, the Court considered the circumstances in which the Court should refuse to make an order for costs in favour of the defence following the dismissal of a criminal charge and I cite from the judgment: "In AG-v-Bouchard

(1989) JLR 350 , the Court considered the circumstances in which the Court should refuse to make an order for costs, and adopted a practice direction issued under equivalent English legislation. The relevant part of that practice direction provides: It should be accepted as normal practice that an order should normally be made for the payment of the costs of an acquitted person out of central funds under section 3 of the 1973 Act, unless there are positive reasons for making a different order. Examples of such reasons are: (a) where the prosecution has acted spitefully or has instituted or continued proceeding without reasonable cause, the Defendant's costs should be paid by the Prosecutor under section 4 of the 1973 Act; (b) where the Defendant's own conduct has brought suspicion upon himself and has misled the Prosecution into thinking that the case against him is stronger than it is, the Defendant can be left to pay his own costs; (c) where there is ample evidence to support a conviction but the Defendant is acquitted on a technicality which has no merit. Here again the Defendant can be left to pay his own costs." 11. Following the enactment of the Human Rights Act 1998 in England, paragraph (c) of the practice direction to which we have referred was deleted. In Romeril the Court adopted the same approach as in Bouchard and stated: "We add a few words only by way of general guidance to the Magistrates following the enactment of the Human Rights (Jersey) Law, 2000, which will, when it comes into force, incorporate into domestic law provisions of the European Convention on Human Rights. In England, as we have said, equivalent legislation has caused the amendment of the practice direction which was considered and adopted in Bouchard. The same approach should be adopted here." 12. It may be helpful to underline the rationale behind these decisions. The presumption of innocence is not merely a hallowed principle of the common law but is also enshrined in the European Convention on Human Rights. If an accused person is acquitted of a criminal charge brought against him or if he is discharged from the prosecution following a decision of the prosecution to offer no evidence he is entitled to be treated as entirely innocent of the charge brought against him. The ancient verdict of " plutôt innocent que coupable " is no longer part of the law of Jersey. There must therefore be exceptional circumstances to justify the exercise of the Court's discretion to refuse such an accused person an award of his costs. 13. The Assistant Magistrate appears to have regarded the appellant's responsibility for part of the delay in bringing the case to trial as justifying his refusal to award costs. It is true that the appellant absconded and was absent from the Island for nearly twelve months. But when the case came back before the Court in April, 2001, it seems that the appellant was responsible for only two of the subsequent five adjournments. 14. It appears to us that the Assistant Magistrate vented his displeasure at the failure of the Court process, in part,

upon the defendant. In our judgment this was not something that he was entitled to do. 15. We repeat that which we stated in Romeril-v-AG : "It sometimes happens that a Magistrate who has reached the conclusion that an accused person should be acquitted nevertheless feels that the accused's conduct is worthy of criticism in some way. It is tempting in such circumstances to seek to penalize him by refusing to award him costs. This is not an appropriate reaction. If an accused person has been acquitted he has been found to be not guilty of the offence with which he has been charged. Other than in exceptional circumstances, and the practice direction sets out an example of such circumstances, he should receive an award of costs." 16. We think that the learned Assistant Magistrate erred in exercising his discretion not to award the appellant his costs in this case. We accordingly allow the appeal and order that the appellant's costs both here and below be paid out of public funds. We are grateful to both counsel for their assistance. Authorities AG-v-Bouchard

(1989) JLR 350 . Gilbraith -v-AG

(1992) JLR 190 . Romeril -v-AG (26 th March, 2001) Jersey Unreported; [2001/71]. Practice Direction (Crime: Defence Costs) (1999) 1 WLR 1832. In South West Surrey Magistrate's Court ex.p . James (18 th April, 2000) Unreported Judgment of the High Court of England. Forrest-v-AG (10 th October, 1994) Jersey Unreported. Magistrate's Court (Miscellaneous Provisions) (Jersey) Law, 1949: Article 18. Costs in Criminal Cases (Jersey) Law, 1961: Articles 1 and 2. Page Last Updated: 17 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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