

JERSEY / JUDGMENT

Evans and Evans -v- AG [2011]

JRC 199 (06 October 2011)

[2011] JRC 199

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JUDGMENT

THE DEPUTY BAILIFF: Decision 1. Morgan Derek Taylor Evans ("Morgan") and his brother Lloyd Reece Evans ("Lloyd") applied to this Court to have judicially reviewed the refusal of the Relief Magistrate Mr Peter Harris on 4 th July, 2011, and of the Acting Magistrate Mr Richard Falle on 12 th July, 2011, to grant them bail. At the Court's sitting on 15 th July, the Court allowed the applications and granted bail on conditions, indicating that detailed reasons would follow. The reasons appear below. 2. On 4 th July, 2011, Morgan was charged, together with Lloyd with having made an affray on 1 st July. Lloyd was charged not only with the offence of affray but also with having committed a grave and criminal assault on a female victim. Morgan is aged 21 and Lloyd is aged 18. They reserved their pleas to the charges and the Relief Magistrate made a provisional decision that the matters were too serious for the Magistrate's Court and jurisdiction was declined. The matter was adjourned until 1 st August with a view to committal proceedings taking place two weeks after that on 15 th August. The Centenier opposed bail on the basis that there was a high risk that the two men would commit further offences. 3. The Relief Magistrate noted that the position of the two men was similar, save that Morgan was 21 and therefore an adult, and in addition had three previous convictions for breach of the peace by fighting. He noted also that a difference was that Lloyd faced, in addition to the charge of affray, a charge of grave and criminal assault. The Relief Magistrate said the evidence of a serious public incident involving an unprovoked assault on three women was very strong. 4. The Centenier notably did not oppose bail on the grounds that there was any risk of the accused failing to surrender to bail. Both had been in Jersey for some three years and both are in full time employment. In refusing bail, the Relief Magistrate said this:- "Conditions were suggested of a curfew, restrictions from licensed premises and such like. However, I do not think that even such conditions would be sufficient to mitigate the risk of further offences given in particular the nature of this offence, as I say, being wholly unprovoked and in particular just for Mr Morgan Evans his record. So taking into account the nature and the seriousness of the charges, the strength of the evidence and the likely sentence, I find there is a risk of further offences which cannot be mitigated by bail conditions and, accordingly, I refuse to grant bail." 5. A further and more detailed application for bail was made before the Acting Magistrate on th July. This involved a fairly detailed review of some of the evidence which might be given and the Court had before it a detailed letter from the

mother of the two accused setting out a number of personal circumstances which it was contended were relevant to the application. In his concluding remarks, the Acting Magistrate said this:- "In my opinion on the facts, the Court would be entitled to impose a custodial sentence and, given the gravity to which I have already alluded of the facts underlying the charges that you face, I believe that you both run a very substantial risk of a substantial custodial sentence whether in prison as in the case of Morgan or in youth custody as in the case of Lloyd. I therefore refuse your applications." 6. This prosecution is not currently before the Royal Court. Indeed, although the Relief Magistrate has provisionally declined jurisdiction, that decision may yet be reviewed, and it is therefore conceivably possible that the prosecution will never reach this Court. The same result might flow from a finding by the Magistrate that there was insufficient evidence upon which to commit. We treat that as a theoretical, if on the evidence before us unlikely, proposition. Nonetheless these possible outcomes emphasise that this Court is not exercising any de novo jurisdiction. We refer to the case of AG-v-Quirke

[1994] JLR N 8C. That case concerned an accused who had been committed to the Royal Court but not yet indicted before the Court. It is therefore of a different character to what is currently before us. The instant case by contrast is clearly one where the decision of the Magistrate is being traditionally reviewed and no de novo discretion arises. As a result, the grounds upon which the Royal Court would normally intervene on a review of the Magistrate's decision to refuse bail would be in circumstances where:- (i) The Court was of the view that the Magistrate had misdirected himself; (ii) There was some procedural irregularity; (iii) The decision reached by the Magistrate was one which no reasonable Magistrate could properly have reached. 7. These are the classic GCHQ grounds of judicial review of illegality, impropriety and irrationality, but they must be considered also in the context of the Human Rights (Jersey) Law 2000 . 8. In order to apply these tests to the decisions of the Relief and the Acting Magistrates in this case, it is necessary to consider what approach they were required to take in dealing with bail applications. 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 . Nonetheless, 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 10 th 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 security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a 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 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;" 10. Before leaving Article 5, we mention also:- "3 Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized 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. Without attempting to lay down all the grounds upon which bail might be refused, the usual grounds are likely to be:- (i) The defendant would fail to attend trial; (ii) The defendant would interfere with evidence or witnesses or otherwise obstruct the course of justice; or (iii) The defendant would commit further offences whilst on bail. 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 exist. 13. For the avoidance of doubt, it is not the case that the possible length of sentence which might be imposed is a legitimate objection to bail. In *Re Makarios*
- (1978) JJ 215, the Royal Court held that the gravity of the offence with which the accused was charged was a matter to which the Court to which the bail application is made is entitled to have regard, independent of the question of whether or not he will surrender to his bail. We respectfully decline to follow that part of the judgment of the Royal Court and do not regard that as any longer representing the Law of Jersey to this extent - the gravity of the offence is not a relevant matter on its own, but it may be a relevant matter if it goes to support what would be a legitimate objection to bail. 14. This Court is therefore faced with a transcript of the proceedings before the Acting Magistrate which appears to show that the Court treated the gravity of the offence and the likelihood of a substantial custodial sentence as a reason for refusing bail. Earlier in the Court's judgment, the summary which the Acting Magistrate gave of the earlier proceedings was that the reasons for refusing bail on the first application were the overall seriousness of the offence, the significant chance that sentences would be custodial and that there was strong evidence against the accused. That clearly shows the way in which his mind was working. He continued later in his analysis by saying "the question that is before the Court is whether in any event this affray would lead to a significant custodial sentence". It would certainly therefore seem that the Acting Magistrate misdirected himself by focussing upon the likely sentence for the charges which have been laid when instead he should have been considering whether there were legitimate objections to bail which could be raised. Particularly where there is a not guilty plea or a reserved plea, the likely sentence for the offence would only seem to be relevant to the question of absconding, and would not normally be relevant to the likelihood of committing further offences pending trial. 15. When we look at the decision of the Relief Magistrate on 4 th July, it appears to us that he was addressing more closely

the potential objections to bail because he clearly did have regard to the risk of further offences being committed. In that connection he took into account the nature and seriousness of the charges. It will almost invariably be the case that the nature and seriousness of the charges of themselves are irrelevant to the possibility of further offences being committed. It is only when added to some other factor such as where the charges tend to reveal a pattern of similar offending over a period of time that the Court might well find that the nature and seriousness of the offending suggested there was a risk of further offences being committed whilst on bail. 16. The strength of the evidence may support the objections to bail in an appropriate case. However, the mere fact that there is a strong case on the charges brought does not necessarily mean that there is a risk of further offending taking place. The Relief Magistrate gives no indication as to why the strength of the evidence was relevant to the risk of further offences. What is worrying is that he then took into account the likely sentence. That may be, as Crown Advocate Hollywood submitted, that he was merely noting that an offence of affray frequently carried a custodial sentence and therefore theoretically the objections to bail could not be dismissed out of hand. However the real difficulty is that either the Relief Magistrate must have taken the strength of the evidence and the likely sentence into account as indicative of a risk of further offences, which seems to us to be illogical, or took into account the strength of the evidence and the likely sentence as a ground on its own to refuse bail, and in either event therefore this would be a misdirection. 17. For all these reasons, we have reached the conclusion that the decisions of the Relief Magistrate and the Acting Magistrate cannot stand and in the circumstances we have granted Morgan and Lloyd bail. Conditions have been applied to that bail which tackle directly the allegations made against these accused that they have indulged in drink-fuelled violence. Those conditions therefore include a curfew and non-attendance on licensed premises other than shops with a 6 th category licence which also sell food. The Court has applied other conditions which go to the risk of absconding, notwithstanding that the Crown did not object to bail on these grounds in the Court below. Authorities Human Rights (Jersey) Law 2000. Bail Act 1976. Extradition (Jersey) Law 2004. AG-v-Quirke

[1994] JLR N 8C. Re Makarios (1978) JJ 215. Page Last Updated: 18 Aug 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 23 October 2026 · Esheria