

JERSEY / JUDGMENT

Lewis and Others v AG [2012]

JCA 209A (15 November 2012)

[2012] JCA 209A

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Court of Appeal 15 November 2012 Before : Sir John Nutting, Bt., Q. C. sitting as a single judge. John Tasker Lewis Ian Michael Christmas Russell Philip Foot James Cameron -v- The Attorney General Ruling by Senior Ordinary Appeal Judge Nutting, JA on an application to adjourn the appeal dates and the question of reporting restrictions. Crown Advocate M. T. Jowitt. Advocate T. V. R. Hanson for Lewis. Advocate R. MacRae for Christmas. Advocate R. Tremoceiro for Foot. Advocate O. A. Blakeley for Cameron. Advocate S. Chiddicks as Amicus for Cameron. Advocate G. Baxter as Amicus for Lewis did not attend.

JUDGMENT

nutting ja: 1. This is an application to adjourn the hearing of applications for leave to appeal certain convictions recorded against John Tasker Lewis, Ian Michael Christmas, Russell Philip Foot and James Cameron. It is unnecessary for me to detail the precise nature of the charges in the long Indictment concerned. Suffice to say that there is a very substantial amount of paper in the case which was heard before Sir Christopher Pitchers and Jurats in the summer of this year. 2. Before I deal with the application to adjourn there is a matter which requires my ruling concerning the possibility of a restriction to be placed on publicity regarding certain matters which have been canvassed this afternoon. 3. I make it clear that I am grateful to Advocate Blakeley who raised the issue, to Advocate Jowitt who assisted the Court on behalf of the Crown (a position which the Crown habitually occupies in matters of such a kind), and I am particularly grateful to Mr Sibcy of the Jersey Evening Post who, if I may say so, both in writing and orally, laid before me submissions which were cogent and relevant. 4. The issue, in short compass, is this. I was told by Mr Blakeley that when the application for leave to appeal is heard, his client may wish to raise a question as to the adequacy of the representation afforded to him during the course of his trial. The matter was alluded to in exchanges between Advocate Chiddicks, who appears as Amicus for Mr Lewis, and myself. Mr Jowitt, too, referred to a relevant passage in the Contentions which were filed on behalf of the Mr Lewis on the 9th November 2012 by Mr Chiddicks. The nature of the suggestion is that Mr Lewis was (and I quote from para 111 of the Contentions) "inadequately represented by his Trial Advocate." Mr Blakeley raised the question whether I should make a ruling banning any reference to that matter pending an opportunity to be given the Advocate concerned to make his own views on a publicity restriction known. I am not in favour of that suggestion. 5. I take note of the fact that Mr Lewis' trial Advocate must be

aware that Mr Lewis may wish to raise the adequacy of his representation at trial, since the legal aid certificate was transferred from him to Mr Blakeley on 18 October 2012. He must also be assumed to have been aware of the proceedings in this case before the Bailiff, which took place a short while ago, and that the question of the adequacy of representation might well have been referred to at that hearing or at the application before me today. 6. I also have in mind the limited nature of the reference to which I have referred, which contains no particulars, and which may or may not be pursued at the appeal hearing, no grounds of appeal on the matter having yet been filed. 7. In my view, advocates in Jersey, just as counsel in the mainland jurisdiction, must develop broad backs in relation to criticism. In court defence advocates may be subject to criticism from the Judge, or in the Court of Appeal, from the Judges. They may be criticised during the course of any hearing by other counsel, including their opponents. By the same token prosecuting advocates must recognise that they may be criticised by the Court or by other advocates in the case. All advocates must expect to be criticised by witnesses who may take exception to questions or their attitude towards them. Such matters will be reported in the press without restriction if the press deem them to be of interest or significance to the readers of the newspapers which they publish or the media for whom they work. 8. It is axiomatic that the reference at para 111 underlines the duty of counsel, subsequently instructed, to avoid making substantive allegations, in other words to avoid adding flesh to the 'bare bones' of the very limited suggestion made at para 111 of Mr Chiddick's Contentions, unless counsel is satisfied that those allegations have substance and that they provide arguable grounds in the appellate proceedings. 9. The Law governing reporting restrictions in this jurisdiction is to be found in the Police Procedures and Criminal Evidence (Jersey) Law 2003 of which Article 106 states:- "In any criminal proceedings, a court may, where it appears to the court to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings ... order that - (a) publication in Jersey of a written report; ... of the proceedings or of any part of the proceedings, be postponed for any period that the court thinks necessary for that purpose." 10. Mr Jowitt has asked me to keep in mind the controlling words "necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings..." 11. The burden of raising the issue lies on those seeking to displace the normal rule which is that anything that is said in open Court should be permitted to be published. 12. Mr Commissioner Page in the case of *G v A*

[2000] JLR 56 at pages 59-60 identified the general principles applicable in this jurisdiction in a way which I gratefully adopt and summarise:- (i) All proceedings should take place in public, in open court. (ii) That principle should not be displaced except for compelling reasons. (iii) An order to hold proceedings in camera is something which must be determined in accordance with principle and not on the basis of what the judge happens to consider to be convenient or reasonable. 13. I quote from Commissioner Page's judgment, "Potential embarrassment on the part of those who have to give evidence is not a sufficient reason, of itself, to justify a hearing in camera." 14. The third principle identified by Mr Commissioner Page was clearly culled from the speech of Viscount Haldane, Lord Chancellor, in the case of *Scott v Scott*

[1913] AC 438:- "... [referring to the general rule as to openness]. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient. The latter must be treated as one of principle, and as turning, not on convenience, but on necessity." 15. I do not take the view that there is any distinction in principle between the case before Mr Commissioner Page, which involved a possible hearing in camera and potential embarrassment to a witness, and the circumstances which confront the Court in this case. In my judgement the principles which he identified are apt also to include a case such as this, where there exists the possibility of an order restricting the publication of a particular matter raised during the course of the proceedings (rather than evidence to be heard in camera) and because of potential embarrassment to an advocate formerly instructed (rather than to a witness). 16. In all the circumstances therefore, in my view, no order should issue from this Court banning publicity in relation to the material which I have quoted. 17. I turn now to the application to adjourn the proceedings from the 27 th November. Mr Blakeley, for Lewis, and Mr Hanson, for Mr Cameron, both assert that they have no alternative but to request the Court to abandon that date. As I have indicated they were instructed in this case on 18 th October, barely a month ago. The trial, as I have also emphasised, took place last summer over a period of several weeks and there is a substantial body of evidence, including a considerable amount of documentary evidence. As I understand it, the whole trial has been transcribed. 18. During the period between the receipt of instructions and the present date, Mr Blakeley has filed written submissions on one ground of appeal, which will be common to all applicants, concerning a direction by the learned Commissioner on joint enterprise. Mr Hanson filed a more substantial document, 18 pages in length, on the 31 st October, outlining and expanding that ground of appeal. 19. But both Advocates have insisted that they are not yet ready to file submissions on any further ground. This means that the timetable, which was set by the Bailiff on the 22 nd October, cannot be adhered to. In relation to Mr Blakeley and Mr Hanson, the Bailiff ordered that they file their opinions on merits and submissions on grounds of appeal (apart from the joint enterprise ground) by the close of business on Friday 9 th November. That deadline passed last week. The Bailiff further ordered that the Crown should file their response to such submissions by the close of business on Friday 16 th November, which is tomorrow. Plainly one of those directions has not been met and the other, therefore, cannot be met. 20. Mr Hanson has submitted to this Court that he anticipates being ready to file further grounds by 6 th December

2012. Mr Blakeley says that he will not be ready until the 15 th December. If I were to agree to such a delay, it follows that the Crown must have a postponed period by which to reply. Mr Jowitt told me that he is not available in this Bailiwick between the 15 th and the 27 th December and that in any event he has a case in the Royal Court commencing the week before his departure, namely on 10 th December. It follows that he would not be able to do any significant amount of work on the subsequent submissions of Mr Hanson and Mr Blakeley (and any further submissions by either of the Amici for Mr Lewis and Mr

Cameron) until he returns from abroad on the 10th December. In those circumstances he asks for time to postpone the Crown's response to the 10th January 2013. 21. There are two critical principles concerned in this application. First, the interests of justice require that the application for leave to appeal be heard as soon as possible. Several months have already passed since these convictions were recorded. The other applicants, Mr Christmas and Mr Foot, are ready for the appeal. Their Advocates have already filed the grounds on which they rely to further their applications for leave. It is not fair to them to delay their application for longer than is absolutely necessary. 22. The second principle involved is that all applicants have as much time as is reasonable to prepare grounds of appeal. Since Mr Blakeley and Mr Hanson were not appointed to act in respect of their clients until the 18th October and since neither of them appeared at the trial, it follows that they must have a proper amount of time to prepare their respective cases. 23. I record with gratitude that all the Advocates in the case approached the problem with which the Court is faced both sympathetically and pragmatically. I would expect nothing less. But it goes without saying that since all of us have had to prepare cases under pressure during the course of our professional lives there is a stage at which the extent of such pressure must be permitted to dictate when a case comes on for hearing. 24. In sympathy with the problems faced by Mr Blakeley and Mr Hanson, Advocate MacRae for the applicant Christmas and Advocate Tremoceiro for the applicant Foot, both recognised that the hearing must be postponed. The only question, therefore, is the identification of the adjourned date. 25. The difference between the date suggested by Mr Hanson, 6th December, and the date suggested by Mr Blakeley, 15th December, is nine days. Mr Jowitt submitted that I should impose the deadline of the 6th December on Mr Hanson and also on Mr Blakeley. The fact is that on the timetable with which Mr Jowitt has provided me, he could only realistically work on the case for the period between the 6th December and the 10th December. I accept of course that there might be opportunities during the course of the case he is engaged thereafter when he might be able to attend to this one. But realistically he would only have four working days to respond to the detail of the submissions filed by the 6th before the date of his return from holiday on the 27th December. I am reluctant to deprive Mr Blakeley of the nine days he requests between the 6th and the 15th December in order that Mr Jowitt should have the four days that he has effectively requested. 26. In those circumstances it is my order that all further submissions of whatever kind and by whomsoever, Advocates or Amici for Mr Lewis and Mr Cameron, should be filed by 5pm on Friday 14th December,

2012. I chose the Friday because it is frankly inconvenient for a Saturday to be nominated as a day for filing. 27. I further order that the Crown should file their responses by 5pm on Friday 11th January, 2013. This gives Mr Jowitt one more day than he requested in reflection of the fact that he did not succeed in persuading me that I should order Mr Blakeley to file nine days sooner than Mr Blakeley requested. 28. In these circumstances, and having reached the conclusion that those should be the dates when contentions on behalf of all parties should be filed in these proceedings, I further order that the hearing be postponed until the 21st January, 2013. That is the date when a Court of Appeal is to be

convened to undertake other business including the applications for leave to appeal against sentence in this case. 29. In my view it is always preferable that applications for leave to appeal against conviction and applications for leave to appeal against sentence in the same case are heard by the same Court. The advantage of a delay, and it is the only advantage of a delay other than advantages for Mr Blakeley and Mr Hanson, is that at least the applications for leave in respect both of conviction and sentence in this case will be heard by a Court of Appeal of the same constitution. In that respect I reflect the even this cloud has a silver lining. Authorities Police Procedures and Criminal Evidence (Jersey) Law 2003. G v A

[2000] JLR 56 . Scott v Scott [1913] AC 438. Page Last Updated: 13 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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