

JERSEY / JUDGMENT

Speirs v AG [2002] JRC 185 (09 October 2002)

[2002] JRC 185

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an appeal against sentence by Brian Speirs , who appeared before the Assistant Magistrate on 14 th August, 2002 charged with one count of assault. 2. The facts as outlined by the Centenier were as follows: the appellant had had a relationship with the victim, Miss James. This had ended. On 15 th July at about 11.25 p.m Miss James was drinking with friends from work in the Chambers public house. After she had been there about ten minutes she was approached by the appellant, who tried to talk to her. She said that she did not want to talk to him and turned away, hoping he would go away. When she turned back he threw a pint of lager over her. 3. In mitigation before the Assistant Magistrate the appellant, who was unrepresented at the time, said that whilst they had been on holiday together towards the end of their relationship, she had poured a pint over his head in some incident and he said that what he did on this occasion was in effect to return what she had done to him. 4. The Assistant Magistrate imposed a fine of £300. He also made an exclusion order for 6 months in respect of 1 st , 4 th and certain 7 th category licensed premises. The appellant does not appeal against the fine, but brings an appeal against the exclusion order. The grounds, as submitted, were essentially as follows: (i) there was no evidence before the Assistant Magistrate that the consumption of alcohol had been a contributory factor in the commission of the offence. (ii) the Assistant Magistrate had failed to make allowance for the fact that the appellant was a chef and would probably need access to licensed premises in order to gain employment. 5. We will deal with first ground as this has been conceded by the Crown. Article 2(1) of the Licensed Premises (Exclusion of Certain Persons) (Jersey) Law provides as follows: "Where the Court by, or before which, a person is convicted of an offence is satisfied that in committing the offence he resorted to violence, or offered or threatened to resort to violence and that his consumption of alcohol was a contributory factor in the commission of the offence, the Court may, subject to paragraph (3), make an exclusion order prohibiting him from entering any specified premises." 6. The Court, therefore, has to be satisfied of two things before it can make an exclusion order. First, that in committing the offence, the offender resorted to violence. That requirement is met in this case. Secondly, the Court must be satisfied that the offender's consumption of alcohol was a contributory factor in the commission of the offence. 7. The Court has read the transcript of what was said by the Centenier and by the defendant in the Magistrate's Court. Nowhere is there any evidence that alcohol had contributed

to the offence. Nothing was said as to what, if anything, the defendant had had to drink. It is true that the incident took place in a public house, but there is no evidence as to how long the appellant had been there. Although there is apparently one eye witness who had a clear and unobstructed view of the incident, nothing was said to suggest that that eye witness considered the appellant to have been affected by drink. In short, the only evidence of the consumption of alcohol before the Assistant Magistrate was the fact that the defendant was in a public house and had a pint of lager in his hand. 8. In many cases it will be possible for the Court to draw inferences as to the contribution which the consumption of alcohol may have made to the commission of an offence. But there must be appropriate evidence from which the Court can draw the necessary inferences. For example, evidence as to the amount consumed, or that the defendant appeared to be under the influence of alcohol. Mere presence in a public house is not sufficient. 9. The Crown has conceded that there was no evidence before the Magistrate's Court from which it could properly draw the inference that alcohol was a contributory factor and we, therefore, allow the appeal on that ground and discharge the exclusion order as having being wrong in principle because there was no evidential basis for the statutory pre-conditions. 10. Had the Court concluded that there was evidence that alcohol was a contributory factor, the Court would then have had to have gone on to consider whether the order made in this case was too draconian in that it prevented the appellant from being employed as a chef, his occupation, in first, fourth or seventh category premises. 11. In the light of our decision on the first point we have not considered this further and we have not heard any submissions on the matter. We, therefore, make no decision as to what our approach would have been on the point. Suffice it to say that it seems to us that if a Magistrate wishes to make an exclusion order, but also wishes not to affect adversely the employment of an individual, the Court may make an exclusion order, but with an exception of access for the purposes of his employment to any specified licensed premises at which the offender is employed. But, as we say, that matter does not arise for decision in this case. The appellant will have his costs. Authorities Licensed Premises Exclusion of Certain Persons (Jersey) Law 1998. Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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