

JERSEY / JUDGMENT

Syvret v AG [2009] JRC 165 (18 August 2009)

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JUDGMENT

THE commissioner: Recusal Application 1. An application to a Judge to recuse himself from hearing a case is an exceptional and drastic remedy which should be rarely resorted to and only on well founded grounds. The definition of recuse, given in the Oxford Dictionary, as accepted by the Appellant, Stuart Syvret, is "to excuse oneself from a case because of a lack of impartiality." 2. The present application by Senator Syvret does not, in my view fulfil any of these criteria. In his case it is a remedy which has been resorted to before and has the appearance of being a matter of course. It arises, as it seems to me, out of a deep seated, but wholly misconceived, belief that he cannot obtain justice in Jersey from any Judge or Magistrate appointed by the Bailiff of Jersey. 3. The present application to me to recuse myself arises out of an appeal by way of case stated from a Magistrate's refusal to recuse herself from trying two minor traffic offences and other offences with which the Appellant has been charged. The Appellant contends that the Royal Court cannot provide a fair hearing before an impartial tribunal, as required by Article 6 of the European Convention on Human Rights in matters concerning him. He makes complaints in written submissions to the Court about what he describes as the Jurat system. Those are of course irrelevant for present purposes since I am not sitting with Jurats. He criticises the Bailiff, the Deputy Bailiff and the Attorney General on what I regard as ill founded grounds. He suggests that any Judge appointed by members of the Jersey Judiciary is "hopelessly conflicted in cases such as this." He goes on to suggest that no Commissioner can properly discharge his duties as the oath of office he has sworn contains mutually exclusive clauses. I will read in full the oath of office which I and other Commissioners, and no doubt Magistrates, take:- "Do you swear and promise before God that well and faithfully you will exercise the office of Commissioner. That you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law. That you will uphold and maintain the laws and usages and the privileges and freedoms of Jersey and that you will vigorously oppose whomsoever may seek to destroy them. That you will administer justice to all manner of persons without favour or partiality and that you will take good heed of the good advice and counsel of the Jurats as the case may require." 4. The Appellant refers, in written submissions, to what he calls "the hopeless and structural dysfunction" of the present judicial arrangements in Jersey. In short, in my view, though the Appellant does not seem to accept this, the effect of his submissions would be to place himself in a position where he is above the law, since there is, in his view, no power in Jersey to try him for any offence. The solution which he proposes is that the Secretary of State in the United Kingdom should require

the Lord Chief Justice of England to appoint Judges, and presumably Magistrates as well, direct from England, to try cases such as this. That is not a matter for me to consider except to comment that it seems to me to be a far fetched suggestion. 5. The Appellant accepts that the burden of proving bias is on him. He does not allege actual bias on my part, but suggests that the bias is apparent and arises out of what he suggests is my friendship, or at least acquaintance, with the members of the high judicial offices in Jersey, that is to say the Bailiff, the Deputy Bailiff and the Attorney General. He points to my attendance at a dinner recently given for the retiring Bailiff, Sir Philip Bailhache. The letter which invited me to that dinner was in these terms:- "To mark the public service of Sir Philip Bailhache, who will be retiring as Bailiff on 30 th June, 2009, the States of Jersey would like to invite you to a dinner being held in Sir Philip's honour." So the invitation was from the States of Jersey and the dinner itself it was hosted by the Chief Minister. It is to be observed, therefore, that it was not the Bailiff's invitation and no suggestion can arise from it of any friendship, let alone untoward friendship, towards the Bailiff himself. 6. References have been made to the well known case of *R v Bow Street Magistrate, Ex parte Pinochet Ugarte* (No 2)

[1999] UKHL 1 , page 52, the leading opinion in which, in the second hearing, was delivered by Lord Browne-Wilkinson. The Appellant draws my attention to a passage at page 7, referring to the reasonable apprehension or suspicion on the part of a fair minded and informed member of the public that Lord Hoffman might have been biased. And on the next page he draws attention to these passages, I quote them so that it is clear that I have them in mind:- "The contention is that there was a real danger or reasonable apprehension or suspicion that Lord Hoffman might have been biased, that is to say, it is alleged that there is an appearance of bias not actual bias." And a passage in the following paragraph:- "The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party." That is the passage the Appellant relies on. And a short passage in the paragraph which follows it:- "...or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias." That case is of course well known to me and I bear it well in mind. 7. Advocate Jordan for the Attorney General draws my attention to the case of *Re Esteem Settlement and the No. 52 Trust*

[2001] JLR 169 and to a passage in the judgment where Vaughan JA says:- "The burden is on the applicant to establish bias. I adopt for the purposes of this judgment observations of the Constitutional Court of South Africa in *President of the Republic of South Africa v. South African Rugby Football Union*, based on the application of the 'reasonable suspicion' test (1999 (4) S. A. at 177): "The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the Judges to

administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience." In my view no reasonable person could see or even suspect that I had any apparent bias, resulting from any relationship I had with the high judicial officers of Jersey. I have not the slightest interest in the outcome of this case, it matters not to me what the outcome is, what matters to me is that I should do justice between the parties, which is according to the oath which I swore when I was elected to the office of Commissioner here. 8. I accept the submission made by Advocate Jordan that there is no established apparent bias in this case. In my view there is no possible reason, nor would any reasonable onlooker think there was any possible reason for me to recuse myself from hearing this appeal and I decline to do so. I regard the application as being frivolous and fanciful and without any merit. Jurisdiction 9. The Magistrate has purported to state a case. Too late it seems to me, she was reminded of the decision in the English case of *Streams and Copping*

- [1985] 1 QB 920, I have now been referred to that case, a decision of the Divisional Court presided over by Lord Justice May. My attention has been drawn to a passage in that case in which the English Law is made clear, it appears at page 928 between letters E and F where Lord Justice May says:- "It follows that Magistrates Courts on the one hand have no jurisdiction to state a case under section 111(1) of the Act of 1980, unless and until they have reached a final determination on the matter before them, and that this Court has no jurisdiction on the other to consider or determine such a case if Justices should nevertheless purport to state one." That is precisely the position that this Court finds itself in on this occasion. The Magistrate has purported to state a case, but it appears to me that she had no jurisdiction to do so until final determination of the matter before her. That means final disposal of the criminal charges brought against the Appellant. Then it would be open to her, if application was made on that occasion, to consider whether or not it was appropriate to state a case. If a case was stated then this Court would consider whether it had jurisdiction to deal with it. 10. Advocate Jordan, on behalf of the Attorney General, assures me that the Jersey Law is in precisely the same terms as the English Act of 1980, and therefore I regard the decision of the English Divisional Court as of strong persuasive authority. In any event even without assistance I would have had to question whether this was an appropriate situation where a case stated should be considered and whether or not this Court had jurisdiction to deal with it. I am quite satisfied that the Court has no jurisdiction to deal with this matter until final determination of the case. I take into account the Appellant's submissions that it would be better if the matter were dealt with now and the case could be remitted to the Magistrate or to another Magistrate. However it does not seem to me that I have jurisdiction or discretion in the matter. The law is clear; this Court has no jurisdiction to consider the matter. I decline to hear the appeal by way of case stated. I should add that I have considerable sympathy with the learned Magistrate in the position in which she was placed. It is regrettable that she was not given earlier advice. Costs 11. I regard the argument that I should recuse myself from hearing the appeal as being fanciful and entirely without merit. I regard it as an appropriate case in which to order the

Appellant to pay the Attorney General's costs. He opposes that application on the grounds he has no means and that he considered it reasonable to bring the appeal in the public interest. I reject those submission. There is no public interest in this case. I order the Appellant to pay the costs of the appeal. They will be taxed in the usual way. Authorities European Convention on Human Rights. R v Bow Street Magistrate, Ex parte Pinochet Ugarte (No 2)

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