

ROYAL COURT

20th January, 1992

10

Before: The Bailiff, and  
Jurats Bonn and Herbert

---

Attorney General

- v -

Jeffrey Anthony

---

Police Court Appeal: Appeal  
by way of case stated against  
the decision of the Relief  
Magistrate not to award the  
appellant costs after he had  
been acquitted.

---

Advocate S.C.K. Pallot on behalf of the  
Attorney General.

Advocate M. St. J. O'Connell for the  
appellant.

---

**JUDGMENT**

THE BAILIFF: This appeal arises out of incidents which took place at what we were informed was a christening party and resulted in the appellant being accused of two offences, namely a grave and criminal assault and a breach of the peace by fighting on the same occasion as the grave and criminal assault.

It is clear from reading his statement and from the evidence that there was really one incident, in the course of which someone was kicked. It was suggested that the appellant was the kicker. The problem was that the person who was kicked was supposed to have bitten the appellant's brother's ear off. That of course quite reasonably incensed the appellant when he heard of it and there was a fight between him and the man who is alleged to have done this terrible thing.

After hearing all the evidence the learned Relief Magistrate acquitted the appellant of both charges. Therefore he must have been satisfied that, at the time of the events, the appellant did not have the necessary *mens rea* to constitute the offences for which he had been prosecuted.

Unfortunately, when the appellant was first interviewed by the police, (I say unfortunately because it led to this appeal) he was unco-operative. He was unco-operative in the sense that very shortly after the interview began on the 30th July, 1990, (the incidents took place on the 28th July) he took advice from his advocate as a result of which he refused to say anything further at the interview. However, a little more than an hour afterwards he repented of his obduracy and made a very full statement in which at the beginning he says: "After thinking about the earlier statement I made ..." (but of course it was not a statement, it was a refusal to make one) "I now realise I was not helping D.C. Bray as I should have with his enquiry. I now wish to explain exactly what happened while talking to Mrs.

Smale ....". At the end he says: "I am sorry for refusing to answer questions earlier. I just felt like I was in a corner and I didn't know how to get out of it. I realise that wasn't the best way to deal with the situation, so I thought honesty was the best way to deal with it". He put himself right there for his previous failure.

The learned Relief Magistrate refused an application for costs whereupon the appellant asked the learned Relief Magistrate to state a case. In that case the principles laid down in A.G. -v- Bouchard (6th April, 1983) Jersey Unreported (No. 121 of the 1991 series) were referred to and properly quoted and I read them again:

***"Where the defendant's own conduct has brought suspicion upon himself and has misled the prosecution into thinking that the charge against him is stronger than it is".***

The facts are then reviewed in very fair detail and it is not necessary to go into them here beyond what I have said.

However, the learned Relief Magistrate refers to blood of the same grouping as that of the man who was kicked, Ramsey, having been found on the appellant's shoes.

The reasons for refusing the costs, it seems to this Court, lie in the refusal of the appellant to answer any questions. The learned Relief Magistrate says this: "But it is impossible to doubt ..." (having referred to the absolute right to refuse to answer questions) "that Mr. Anthony by his attitude became the author of his own misfortune for being refused costs". But as I have just said, although he refused to answer those questions, within or shortly after an hour later he made a very full statement and it was upon that statement that the prosecution was founded. The learned Relief Magistrate goes on: "Had he

spoken the truth of the matter then it is possible that he would not have been charged". Well, presumably by acquitting him the learned Relief Magistrate found that the statements which he made together with the evidence he heard were true and that he was not in fact hiding matters from the police.

He goes on to quote the well-known statement of Jeremy Bentham that "innocence strives towards the light; guilt lurks in the dark"; yes, it does.

Mr. Pallot went to great lengths to argue quite fairly that the Court must divide its thinking into evidence that is necessary for a conviction and the unfettered discretion of a Court, which we accept the Police Court has, to grant or not to grant costs. Mr. Pallot has rightly said that it does not follow in a criminal prosecution that because the accused person has been acquitted he should automatically get his costs. With that we agree.

Had the learned Relief Magistrate gone on to say "Well, even if I were wrong about this point of silence, nevertheless for the following reasons I think that this man does not deserve his costs", there would have been, perhaps, more to this case than there is. He did not do that; what he did was to ask two questions of the Royal Court: Did the defendant's conduct at his interview under caution by the States of Jersey Police bring suspicion on himself and mislead the prosecution into believing that the case against him was stronger than it was, following Bouchard? Having regard to the fact that barely an hour later he made a full statement, the answer to that question must clearly be no. Even so, it cannot be said in law that by remaining silent *per se* means that you bring suspicion upon yourself. You are only exercising your legal right to silence and this Court would not like it to be thought that if you

exercise that right, that is in itself a ground for refusing you costs, if you are subsequently acquitted. However I am not doing what Mr. Pallot feared the Court might do; that is to say, I am not saying that in every case of this nature, there would have been an award of costs; that does not follow.

In this particular case, the Relief Magistrate seems to have based his refusal on the Bouchard case but he did go on in the second part of his case stated by saying this: "If he did not ..." (that is to say, if the answer to the first question is no - and the Court has found that the answer to the first question is no) "was the Court nevertheless right in refusing the defendant his costs in the light of paragraph 3 at p.698 of Archbold (41st Edn.) quoted in Bouchard "...**The exercise of those powers is in the unfettered discretion of the court in the light of the circumstances of each particular case**"."

Mr. Pallot has invited us to go beyond that generalised statement and to examine what the facts were that, in this particular case, entitled the Magistrate to exercise his judicial discretion to refuse the appellant's costs. It appears to be that the appellant had the opportunity to disengage from the fighting; that he brought it upon himself by fighting at all; and that he made a statement which appeared to suggest that he was involved himself somewhat differently from the way the evidence which was finally heard suggested.

All these things are peripheral. The fact is there was a fight. If every person who got into a fight, and is acquitted, is deprived of his costs because he got into a fight, again, that is not a general proposition which we find favourable in this Court. It does not seem to this Court that the Magistrate directed his mind to anything more than the question of silence and the question of the refusal of the appellant to answer the

questions. We can understand the Court's view but in our opinion we think that was wrong. Accordingly we allow this appeal and direct that the costs of the prosecution below will be paid for by the prosecution. You will have your costs this afternoon.

Authorities

A.G. -v- Bouchard (6th April, 1983) Jersey Unreported (No. 121 of 1991).

C. Ennings: A Practical Approach to Criminal Sentencing (3rd Edn) p.345.

A.G. -v- Mahon (9th December, 1991) Jersey Unreported.

Berry -v- British Transport Commission (1961) 3 All E.R.