

**ROYAL COURT**  
**(Samedi Division)**

18th January, 1993

Before: The Bailiff, and  
Jurats Bonn and Herbert

---

Anthony John Bouchard

- v -

The Attorney General

---

Police Court Appeal.

Appeal against conviction in respect of one charge of assault.

---

Advocate Miss D.M.C. Sowden for the appellant.  
Advocate A.D. Robinson on behalf of the  
Attorney General.

---

**JUDGMENT**

**THE BAILIFF:** This is an appeal by Anthony John Bouchard against his conviction by the Assistant Magistrate on 12th November, 1992, on a charge of an assault.

There are two grounds of appeal, the first was that the learned Assistant Magistrate found the appellant guilty against the weight of evidence and secondly that he indicated what his verdict was to be during cross-examination before the defendant's advocate had summed up the defence evidence.

We invited counsel to deal with the second point first because if we found in favour of the appellant on that point, that would dispose of the matter.

Counsel for the appellant has drawn our attention to a number of statements in the transcript. The first of these statements appears at p.82, and it is important - as counsel for the Attorney General has said - for the Court to have regard to what appears before p.82; the case for the prosecution and the defence case had been largely heard - at least the defence case was put by the appellant himself. He had been examined and cross-examined very fully by the learned Assistant Magistrate and it was at the end of that cross-examination that the passages to which Miss Sowden drew our attention occurred and which she said - taken as a whole - created a material irregularity which would entitle the appellant to succeed on appeal.

The first of these remarks is to be found on p.82 at line 5. It followed an exchange between the appellant and the learned Assistant Magistrate. I interpose here to say that the alleged assault was a punch, or possibly two punches, given to a Mr. Wilford and the defence was that he (Mr. Wilford) had first attacked the appellant with a Swiss army knife. It was an unpleasant episode and both parties to it suffered injuries.

After the Judge said: "You see", he was interrupted and the appellant said: "I did not hit that gentleman first". There was a conflict of evidence between who was in fact the real assailant.

The first passage to which exception is taken then follows and I read:

*JUDGE TROTT: You see, I am quite satisfied in my mind, I'm not going to ask you any more questions because I am totally satisfied, one hundred per cent satisfied, that you are guilty as charged".*

There followed a number of further questions - more a conversation than a series of questions and answers between the learned Assistant Magistrate and the appellant. Halfway down the same page, the Judge says: "You are asking me to stretch my imagination. I am not going to stretch it any more because I am totally satisfied - yes, thank you, go back". At that stage, unless counsel - who was not the present counsel appearing this morning - had risen, it appears to this Court that the Magistrate had concluded there was no need for any re-examination. However, Advocate Scholefield who was appearing, persisted quite fairly and properly and asked if he could re-examine the appellant.

The reply of the Judge to that request was: "Oh, yes, you can re-examine all you like, I'm sorry".

Other passages were also mentioned to us. Again, the question of the imagination is referred to on p.84 at line 7. In reply to a comment by Advocate Scholefield who said: "You do see, though, Sir, don't you, that he would have been going round three

sides of a square to get home that way". JUDGE TROTT: "Well, yes, but he said he wanted to get away, I mean, you, you're asking me to stretch my imagination, Mr. Scholefield".

Later, at the bottom of the page, the appellant had said in reply to his witness that he swore to God he had only punched once.

Counsel then said: "And let's get to the point which is giving the learned Magistrate such difficulty". "Why"? He was interrupted and the Judge said: "I am in no difficulty, Mr. Scholefield. You are making the difficulty".

Finally, so far as that part of the transcript is concerned, on p.86 the Advocate made the following request: "If I may make my concluding address, Sir, I can see well from what you have indicated that I have a mountain to climb, but I ....." (interrupted) and Judge Trott then used the single word "Everest".

Counsel was then permitted to put his submissions, with some questions from the learned Assistant Magistrate. At the end of p.93, when the submissions had been concluded counsel said: "That is the position for the defence, Sir". The Judge said: "Thank you. As I said a moment ago, I am totally satisfied that the charges are proven and therefore I find the accused guilty. Anything known"?

Miss Sowden has submitted that that shows a material irregularity such that - looking at the authorities in Archbold - an appeal should be allowed.

As counsel for the Attorney General has suggested, we have to decide whether what took place was so material and so conclusive that we should interfere.

It is unnecessary for me to go through the authorities, they are very clear, they are well-known and the principle is fully appreciated. In this particular case, we are satisfied that there was a material irregularity which could not be cured by whatever happened afterwards; it is true that counsel, by persevering, was able to put his case and afterwards to re-examine the appellant, but it is apparent to us from the learned Assistant Magistrate's remarks, to which I have referred, and by the questions he put to counsel during counsel's address, and indeed by the concluding remark at the bottom of p.93, that he had made his mind up and nothing that counsel was going to say was going to change it. That was, under the circumstances, in spite of what Mr. Robinson has said with force, a very material irregularity and one which requires us, in the interests of justice, to allow the appeal and accordingly it is allowed with legal aid costs.

**Authorities**

De Smith: Constitutional and Administrative Law (4th Ed'n) p.p.  
569-581.

Archbold (1992 Ed'n): p.p. 1156-1158  
p.p. 1170-1171  
p.p. 1174-1176  
p.p. 1190-1191.

A.G. -v- Griffin: (1967-69) JJ 1001.

Re: Pearce (12th June, 1987) Jersey Unreported.

Skinner -v- Le Main (30th April, 1990) Jersey Unreported.