

ROYAL COURT  
(Samedi Division)

11th March, 1996

49.

Before: The Deputy Bailiff, and Jurats  
Coutanche, Vibert and de Veulle.

The Attorney General

- v -

Terence John Bardwell

Not guilty plea to:

1 count of grave and criminal assault.

Judgment on preliminary point of admitting evidence as to the  
accused's character.

Judgment given in the absence of the Jury.

Advocate R.J. Renouf for the accused.  
W.J. Bailhache, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: The accused has elicited or tried to elicit that  
a good distance before the alleged assault occurred, the  
complainant began arguing with the accused in Great Union Road and  
also commenced kicking him at the entrance to Poonah Lane and  
5 Poonah Road. That, however one looks at it, implies that she was  
guilty of an original assault.

Mr. Bailhache now intimates to us that if this line of  
questioning continues he will ask that Bardwell's record be put in  
10 to the Jury.

In the case of Selvey -v- DPP (1970) AC 304 (which was  
decided in the House of Lords) the Court said this:

15 *"The judge may feel that even though the position is  
established in law still the putting of such questions as  
to the character of the accused person may be fraught with  
results which immeasurably outweigh the result of*

5 questions put by the defence and which make a fair trial of the accused person almost impossible. On the other hand in the ordinary and normal case he may feel that if the credit of the prosecutor or his witness has been attacked it is only fair the jury should have before them material from which they can form their judgment whether the accused person is any more worthy to be believed than those that he has attacked".

10 The problem as I see it, considering the passages of Archbold that have been cited to us, is that certain allegations have now been made, or it is implied that they will be made, against the complainant.

15 The Court in R -v- McLeod ("The Times" of 14th April, 1994 CofA) (and this is reported at 8-187 of Archbold) dealt with some of the issues raised by that appeal, and I need only to set out four of the propositions.

20 "1) the primary purpose of cross-examination on the previous conviction and bad character of the accused is to show that he is not worthy of belief. It is not to show that he has a disposition to commit the type of offence with which he is charged. But the mere fact that the offences were of a similar type to that charged or that their number and type may have the incidental effect of suggesting a tendency or disposition to commit the offence charged does not make questions about them improper;

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30 2) it is undesirable that there should be prolonged or extensive cross-examination in relation to previous offences. This would divert the Jury from the principal issue in the case. And if the earlier offences were admissible under the similar fact principle, prosecuting counsel should not seek to probe or or emphasise similarities between the underlying facts of previous offences and the instant one; and

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40 3) similarities of defence which have been rejected by juries on previous occasions and whether or not the accused pleaded guilty or was disbelieved after giving evidence on oath could be a legitimate matter for questions. Such matters were clearly relevant to credibility."

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50 It does not mean, it seems to me, that it is any more likely that the accused committed the crime because he committed a previous offence in 1982, or has a criminal record, but it may mean that it is more unlikely that the allegations made against

the complainant are true than if they were made by a person of good character.

5 In those circumstances, (and I appreciate the difficulties this may put Mr. Renouf in) I am going to issue a warning that if this line of questioning does continue, I will allow Mr. Bailhache to put in the record of the accused.

Authorities

Selvey -v- DPP (1970) AC 304.

Archbold (1996): 8-187: R. -v- McLeod ("The Times" of 14th April,  
1994, C.A.).