

ROYAL COURT

5th March, 1990

34

Before: The Bailiff, and  
Jurats Coutanche and Orchard

---

Police Court Appeal: Mark James Alexander Dawson

---

Appeal against convictions on one charge  
of being disorderly on licensed  
premises and one charge of assault

---

Solicitor General for the Crown,  
Advocate A.O. Dart for the appellant.

---

JUDGMENT

BAILIFF: It is of course possible that there is something in the European Convention on Human Rights which would limit the power of this Court to rule as it is now going to, but in the absence of having it brought to my attention (and I think from my earlier reading of it that there is not anything that lays it down specifically), the rule of law has to be applied. The Court therefore has to ask itself whether the Magistrate, in coming to the decision that he did, could have erred in offending against that general rule of law. We do not think that he did and therefore we are going to approach this appeal on the basis that the Convention on Human Rights is not infringed.

This is an interesting appeal because it comes to the Court on the ground that the learned Magistrate erred inasmuch as he failed to recognise that the right to be legally represented in Jersey is an absolute right, as opposed to one which is conferred by the exercise of a Court's discretion.

In our opinion, there is no statute which governs the matter and therefore the case of *Robinson -v- The Queen* is not entirely in point because in that case the Privy Council made it clear that there was a Jamaican Statute and that the legal right to representation was not absolute in the sense that adjournments must always be repeatedly granted to secure legal representation. We can think of a number of situations where it might be preferable for an accused person to be legally represented, however, we cannot say that he has such an absolute right that every other consideration must be ignored. It would seem to us to be absurd that if, for example, a long delay had been granted to an accused person in order to enable him to obtain legal aid, and after many months he didn't do so through his own fault and the Court and all the witnesses were assembled in order for him to be dealt with, the Court was bound to grant a further adjournment.

I am going to rule on behalf of this Court, as a matter of law, that the right to be legally represented in Jersey is a conditional one and is exercisable at the discretion of the Court, whether it is the Magistrate's Court or this Court. Having said that, there is a general overriding principle which is that, all things being equal, the accused, if he wishes, should be represented and obtain legal aid. However, the discretion by which legal aid is granted should not be removed by an absolute rule which I can find nowhere as part of our Law.

Having said that, we then had to consider whether in this particular case the Magistrate was erroneous in the way in which he applied his discretion. It is clear to us from looking at the transcript that he was not. He noted very carefully that the incident happened on the 12th September, 1989, and that the case was originally due to be heard on the 2nd November, 1989, but was eventually heard on the 16th January, 1990, having been brought forward two days. It is

quite true, and we accepted Mr. Dart's submission, that the appellant might well have been about to make a request for legal aid by saying that he had been told by the Police Officer in charge of his case that the proper time to make such an application would be when he first came before the Magistrate, and indeed this was the first occasion. It may well be that the Magistrate would have had that before him if the appellant had been allowed to put that forward, but even if he had, the Magistrate's mind was clearly directed at the length of time that had run between the accused first being told what was going to happen and the case being heard.

The Magistrate's mind was clearly directed to this question of the length of time and in the circumstances we cannot find that he exercised his discretion in such a way as to wrongfully deprive the accused of legal representation. Moreover, with regard to the conduct of the trial itself, we are glad to see, Mr. Dart, that the Magistrate was helpful and courteous to the appellant right through the trial. Indeed, the appellant conducted himself extremely efficiently and brought out before the learned Magistrate practically every point that could have been elicited. We cannot find that the Magistrate, having exercised his discretion as he did, deprived the appellant of assistance to such an extent that his case was not fairly presented to the learned Magistrate. It was fairly presented and the learned Magistrate preferred the evidence of the prosecution witnesses and exercised his discretion in doing so. We do not think that we ought to interfere and the appeal is therefore dismissed. Mr. Dart, you will have your legal aid costs.

Authorities referred to:

Robinson -v- The Queen (1985) 2 All ER 594.

R -v- M Kingston (1948) CAR 183

AG -v- DG Shannon (15th April, 1985) Jersey Unreported