

ROYAL COURT

28th June, 1989

Before: The Bailiff and
Jurats Blampied and Bonn

Police Court Appeal: Patrick Joseph Corkery

Appeal against a conviction by the
Police Court on a charge of assault.

Advocate S.C. Nicolle for the Crown
Advocate S.J. Habin for the appellant.

JUDGMENT

THE BAILIFF: This case is not without difficulty, partly because the prosecution was brought some time after the events and also because - for reasons which we can well understand due to the pressure on the Magistrate's Court - it was not possible to continue the hearing in the Court below without considerable delays between sessions. In passing, the Court would like to observe that, as far as possible, criminal cases should follow on day after day in order that, at the conclusion, the evidence may be fresher in the memories both of counsel and the Magistrate which is not the case where there are long delays, explicable though they may be.

Having said that, it is difficult for us, looking at the whole of the evidence, to say with certainty that the Magistrate had before him sufficient evidence upon which he could find the accused guilty beyond reasonable doubt. We need only mention the points that counsel has raised. For example, the Magistrate accepted the evidence of the two main prosecution witnesses, Miss Doyle and Miss Jéhan, as to what they saw outside the discothèque, but rejected their evidence as to what they saw inside, that is to say that the appellant was removing the assaulted man, Mr. Laurent, from the room. Mr. Habin quite rightly pointed out that it is not really open to a Magistrate to accept one part of the evidence and reject another, because that is inevitably bound to weaken that part of the evidence which he is minded to accept.

It would have been possible, although we do not necessarily accept all that Mr. Habin has said, for Corkery to have been there. He himself admitted that at one stage he lashed out at somebody who was lying on the ground, however, that would appear to be somebody else. On the other hand, a man called Weir was convicted of a grave and criminal assault. Another man, Scott, did not come back to stand trial. There is also a difficulty over the injuries in that when Laurent was first seen by Dr. Cartwright in the General Hospital, his injuries were more consistent with having been hit in the face with a straight blow than with having sustained the kind of vicious assault which it is said he suffered later on, on the ground. Injuries resulting from the latter sort of assault were later discovered but there was a gap. The evidence is quite clear that when he was first seen, those later injuries were not apparent to Dr. Cartwright and that he would have noticed them had they been there. Therefore we must draw the conclusion that something happened to Mr. Laurent after the incident that night. That being so, we can find no evidence in the transcript that the learned Magistrate applied his mind to that difficulty. At p. 314 of the transcript there is an explanation by the accused as to how it was that Laurent had acquired these extra injuries. He had been told anonymously (and I use the expression in the transcript) that: "Laurent had been pissing it up". Therefore there is an unexplained gap between Mr. Laurent being taken to the Hospital as a result of something that had happened at the discothèque and his receiving some further injuries. We have no doubt that they were further injuries which were not attributable to what happened at the discothèque.

There is consequently a measure of uncertainty in this case which disturbs the Court. It may well be, although it is not clear from the transcript, that the Magistrate took this matter into account and that it was for that reason that he reduced the charge from one of grave and criminal assault to one of ordinary assault. That may be, but it is not clear to us from the transcript whether or not that was the reason for the reduction.

Having said this, we feel that it would be unsafe to allow the conviction to stand; there is an element of doubt in it and the appellant is entitled to that doubt. The appeal is allowed, with costs.

n.b: no authorities.