A.G.-v-Bouchard.

At the request of a Member of the Bar, the attached Judgment which was delivered by the Deputy Bailiff, as he then was, in the Royal Court on 6th April, 1983, is being circulated to subscribers.

ROYAL COURT

(Samedi Division)

121 of 1991.

6th April, 1983

Before: The Deputy Bailiff, and
Jurats Bailhache and Baker

The Attorney General

_ 17 _

Anthony John Bouchard

Application for an order for the payment of the costs of the defence under Article 2(1)(c) of the Costs in Criminal Cases (Jersey) Law, 1961.

The Attorney General;
Advocate C.M.B. Thacker for the applicant.

JUDGMENT

THE DEPUTY BAILIFF: This is an application by Anthony John Bouchard for the exercise of the Court's discretion under

Article 2 of the Costs in Criminal Cases (Jersey) Law, 1961, to order that his costs be paid out of public funds. Because there has been no direction given by the Royal Court in such matters before, although it has had regard, I have no doubt, to the equivalent English legislation, the Court thinks it would be helpful if such a direction were now given.

The power of the Royal Court to order that the costs of an acquitted or discharged person is paid out of public funds arises from Article 2 of the Costs in Criminal Cases (Jersey) Law, 1961. The relevant parts of that article are as follows: "Subject to the provisions of this Article, where any person is prosecuted or tried before a Court to which this Article applies, the Court may (c) if the accused is discharged from the prosecution or acquitted, order the payment out of public funds of the costs of the defence."

There is similar legislation in the United Kingdom which, however, is limited to accused persons who are acquitted, but for the purpose of the present ruling, we have thought it right to apply the same principles here. In the United Kingdom, there is a practice direction to assist the Courts, and the latest one is to be found on page 698 of the 41st edition of Archbold. relevant parts of paragraph three and four of those directions are as follows: *"3.* The exercise of those powers is in the unfettered discretion of the court in the light of the circumstances of each particular case. 4. It should be accepted as normal practice that an order should normally be made for the costs of an acquitted defendant out of central funds (under section 3 of the 1973 Act) unless there are positive reasons for making a different order. Examples of such reasons are:-

(a) where the prosecution has acted spitefully or has instituted or continued proceedings without reasonable cause the

defendant's costs should be paid by the prosecutor (under section 4 of the 1973 Act);

- (b) where the defendant's own conduct has brought suspicion on himself and has misled the prosecution into thinking that the case against him is stronger that it is the defendant can be left to pay his own costs;
- (c) where there is ample evidence to support a conviction but the defendant is acquitted on a technicality which has no merit. Here again the defendant can be left to pay his own costs."

We note that the examples given in paragraph 4 are not exhaustive. We think that the matters referred to in the two paragraphs we have cited should apply in similar applications before the Royal Court. In respect of the present application, both the Attorney General and Mr. Thacker for the applicant have agreed that the Court should apply its mind to paragraph 4(b), and therefore we have had to consider whether it was the defendant's own conduct which brought suspicion on himself and that conduct has misled the prosecution into thinking that the case against him was stronger than it was. The power to award costs is given to a Court to which Article 2 of the above Law applies and before which the applicant was prosecuted or tried, but it is, I think, to be read in conjunction with Article 13(1) of the Royal Court (Jersey) Law, 1948, which reads as follows:

"Power of the Bailiff and Jurats:

(1) in all causes and matters, civil, criminal and mixed, the Bailiff shall be the sole judge of law and shall award the costs if any".

It follows, therefore, that it is my duty to award the costs, under Article 2 of the Costs of Criminal Cases (Jersey) Law, 1961.

The case against Bouchard as far as the police is concerned arose firstly from an interview that was held between him and the police on the 20th November; but that interview would appear to have followed a witness statement of Mr. Peter Savory which was made on the 17th November, 1982. In that statement, Mr. Bouchard was implicated in such a way that if it was intended to rely on that statement, further corroborative evidence would have been necessary as Mr. Savory was his accomplice. That corroborative evidence was obtained later as a result of statements made by a Mr. Hancock and a Mr. Aubert, but in the Magistrate's Court; they retracted those statements and were treated as hostile witnesses.

During the interview with the police on the 20th of November, it was clear that the applicant was extremely unhelpful. When he was first seen he replied to the police after being cautioned that he was going to be arrested on suspicion of importing drugs, "I've only been back for ten days, how can I conspire?" During the course of the interview, which I've just referred to, he was whistling and singing, in a way certainly not conducive to assisting the police. However, Mr. Thacker has urged that the wording in paragraph 4b of the practice direction should be conjunctive; that is to say that the Court ought to take into account not only the conduct of the accused but ask itself whether that conduct misled the prosecution into thinking that the case against the accused was stronger than, in fact, it was. I accept that submission.

I have to say that the two Jurats assisting me in this matter would, in fact, have found that the conduct was of such a nature and did mislead the police so as to justify the Court refusing the application. However, I regret to say I find myself not in agreement with that finding and I have reached the conclusion, because it is my duty to apply my mind to it under

the 1948 Law, that I am not satisfied that it was the conduct of the accused himself together with any misleading of the police that led them to think that their case was stronger than it really was. I therefore make an order that the accused shall have his costs.

Now, when I say his costs, I mean that contribution towards the legal aid assistance which he has been granted which he would normally expect to make.

<u>Authorities</u>

Costs in Criminal Cases (Jersey) Law, 1961: Article 2.

Archbold (41st Ed'n): p.698.

Royal Court (Jersey) Law, 1948: Article 13.