

ROYAL COURT

27th April, 1992

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Before: The Bailiff, and  
Jurats Blampied and Hamon

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The Attorney General

- v -

David Francis Whiteford

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Application for review of Magistrate's decision to refuse Bail.

Letter which cast doubt upon the veracity of the prosecution statements was passed to the Magistrate to support the applicant's contention that the prosecution statements linking the Representor to the offences were unreliable.

Magistrate refused bail for the stated reason that he considered that an attempt was being made to force prosecution witnesses to change their evidence and that it would, therefore, be unsafe to release the Representor on bail.

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Miss S.C. Nicolle, Crown Advocate.  
Advocate S.E. Fitz for the applicant.

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**JUDGMENT**

**THE BAILIFF:** The applicant is at present charged with two main offences in the Police Court: one of breaking and entering and stealing from a restaurant, which he denies. (The other subsidiary counts are only in support as alternative charges);

and one of malicious damage of a minor nature at the Police Station, to which he has pleaded guilty.

He has applied on three occasions, twice on his own and once through counsel, to the Magistrate for bail. He has a bad record, including a number of cases of dishonesty and manipulating the course of justice; but the Magistrate is said to have erred by refusing bail for the third time, that is to say after Miss Fitz had made her application on behalf of the applicant. He based his refusal solely on a letter which was produced by the applicant but written by somebody else and was said to implicate at least one prosecution witness and possibly another, and perhaps cast doubt on their evidence.

However, the evidence of the offence itself, as Miss Nicolle has said, suggests that there were two witnesses, one of whom is mentioned in the letter, but another was not, who identified the accused at or near the scene of the offence, almost *in situ* where he was arrested. We are not satisfied that the letter can be said to impugn the identification evidence. The weight to be attached to that evidence of course will be tested in due course, but the letter itself does not impugn it. In any case the writer was not called and one of the persons mentioned in that letter has denied any implication. Therefore, even if the Magistrate might have stressed that letter as being the reason for refusing bail, it is clear to us that at the back of his mind he had not dismissed the other reasons and not discarded them. The other reasons being the possibility of re-offending; the seriousness of the offence; and possibly absconding.

We are satisfied looking at all the facts and taking into account the proper matters that we should take into account and I repeat them: the likelihood of his appearing or not; the

record - which it is true shows that he has answered bail on occasions - but is nevertheless a serious one; the question as to whether he would interfere with witnesses - we cannot express any view on that - and the question whether the release on bail would impede the police in their investigations leads us to conclusion in fact that the Magistrate was right, although he may have expressed himself in one matter which can be faulted as Miss Fitz has suggested. But having said that we cannot say, looking at it in the round, that the Magistrate erred and therefore bail is refused.

No authorities.