

ROYAL COURT
(Samedi Division)

10th October, 1994

205.

Before: The Deputy Bailiff and Jurats
Coutanche and Le Ruez

Police Court Appeal
(the Assistant Magistrate)

Aaron Michael Forrest

-v-

The Attorney General

Appeal by case stated from the refusal of the Assistant Magistrate to award the Appellant costs, following acquittal of 28th June, 1994, on:

1 count of grave and criminal assault.

Appeal allowed.

Advocate P.S. Landick for the Appellant
J.G.P. Wheeler, Esq., Crown Advocate

JUDGMENT

THE DEPUTY BAILIFF: This appellant, Aaron Michael Forrest, appeals against the refusal of the Magistrate to award him costs following the abandonment in the Police Court on 28th June, 1994, of the prosecution for having committed a grave and criminal assault upon his common law wife.

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Mr. Landick on behalf of the appellant brings his appeal under Article 18 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949 seeking to question the decision of the Police Court on the ground that it was wrong in law or in excess of jurisdiction.

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We pause there to emphasise that it is not for this Court to substitute its own view of the matter and to exercise the discretion of the Magistrate in determining whether or not to award costs. The decision is that of the Magistrate and we can

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only set that decision aside if we are satisfied that his decision was either wrong in law or in excess of jurisdiction.

5 Mr. Landick has drawn our attention to the transcript of the
the proceedings which took place on 28th June. After the
Centenier had offered no evidence and the case had been dismissed
the following exchange took place: Advocate Landick: "I would
like to apply, Sir, for legal aid costs." Judge Trott: "I think
10 you have been very lucky, Mr. Landick. No way. I think you had
better caution your client about his behaviour in future." Mr.
Landick complains that there was a breach of the rules of natural
justice in that he was not allowed to develop his application for
costs.

15 In our judgment the learned Magistrate did err in announcing
his decision before permitting counsel to develop his argument in
support of his application. We therefore quash the decision of
the Magistrate. We have given consideration as to how we should
now proceed. Because the argument in this court has already
20 occupied as much time, no doubt, as the three hearings which took
place in the Police Court, we do not consider that it is
appropriate to remit the matter to the Magistrate for
determination in that Court. We accordingly order, having
quashed the decision of the Magistrate, that the appellant should
25 have his legal aid costs both of the proceedings in this Court and
of the proceedings in the Police Court.

We have considered carefully, Mr. Landick, your argument that
we should review the case of Bouchard (1989) J.L.R. 350.
30 Bouchard was decided by a court of equivalent jurisdiction some
ten years ago and we do not think that it would be appropriate for
the Court as currently constituted to set aside the decision of
the Royal Court in Bouchard whatever our views of the merits of
that decision might be. Your client will have his legal aid
35 costs both here and below on the basis decided in Bouchard.

Authorities

A.G. -v- Bouchard (1989) JLR 350.

Douglas -v- A.G. (5th February, 1990) Jersey Unreported.

Legal Practice Committee Report (1993) pp. 14-15.

Costs in Criminal Cases (Jersey) Law, 1961.

Police Court (Miscellaneous Provisions (Jersey) Law, 1949.

A.G. -v- Crocker (28th October, 1993) Jersey Unreported.