

ROYAL COURT

13th July, 1988

Before: the Deputy Bailiff,
assisted by
Jurats Vint and Le Ruez

Her Majesty's Attorney General

- v -

Jacqueline Annison

Appeal against conviction in
respect of one count of assault

Advocate A.J. Olsen for the Crown
Advocate P.C. Sinel for the Appellant

JUDGMENT

DEPUTY BAILIFF: This appellant appeals against her conviction. I think I should say something because this is a question of law. With some reluctance because the appellant's behaviour was reprehensible, the appeal has to be allowed on legal grounds, because and I think Mr Olsen has correctly conceded, the facts of the case do not amount in law to an assault. The alleged assault happened by misadventure. As Archbold 36th edition says at paragraph 2640: "There are many cases of accidents which cannot be set up as a defence in an action for trespass to the person, but which would certainly be a good defence upon an indictment. In civil cases, the accident

must have been unintentional, and not due to negligence or any want of caution, if the defendant is to be excused.... But in criminal cases, it may be deemed by a general rule that the same facts as would make a killing homicide by misadventure will be a good defence upon an indictment for a battery". There is no doubt that what the appellant did here was a grossly negligent act, but it did not contain a hostile act, it was not aimed at any person, and therefore what she did was a civil tort.

In Jersey there is no distinction between assault and battery. What we have is an "assaut" and an "assaut grave et criminel". The distinction between them is one of fact and degree. An "assaut" (assault) is the striking of another or at another, including an attempt to do so, whether or not the party striking misses his aim, in an angry, revengeful, rude, insolent or hostile manner. In other words there must be hostility towards someone, but not necessarily the person who is struck.

In the instant case there was gross negligence but no hostility and therefore it could not be an assault. To seek to incorporate recklessness as an element of assault in this case is inappropriate. Recklessness is relevant only where the act done - intentionally or recklessly - causes another to apprehend immediate and unlawful violence. A person who recklessly applies physical force to the person of another commits an assault. But here there was no reckless application of physical force to the child.

We do not propose to complicate matters by indulging in academic discussion of mens rea, intent and recklessness as an alternative to intent. It is better, I think, in this case to allow common sense to prevail. The appeal is allowed, the conviction is quashed and Mr Sinel will have his legal aid costs.

Authorities referred to in the Judgment:

Archbold 36th Ed. para. 2640