

ROYAL COURT

5th February, 1990

27.

Before: The Bailiff, and
Jurats Blampied and Orchard

Police Court Appeal by way of case stated: Joan Douglas

Case stated - the Police Court Magistrate
having declined to award costs to the
appellant following her acquittal on charges
of larceny and criminally receiving, hiding
or withholding property.

Advocate S.C. Nicolle for the Crown,
Advocate T.J. Le Cocq for the appellant.

JUDGMENT

BAILIFF: This appeal arises by way of case stated by the learned Magistrate in the case of Miss Joan Douglas, who was acquitted by the Magistrate of charges involving receiving and withholding a number of items.

The Court below had regard to the case of AG -v- Bouchard (6th April, 1983) Jersey Unreported.

There the Court considered Article 2 of the Costs in Criminal Cases (Jersey) Law 1961, which empowered the Royal Court and the

Police Court to order costs to be paid out of public funds and related that power to the equivalent statutory power in the United Kingdom and adopted the general principles which are followed in that jurisdiction and to which the Court referred in its judgment as being set out on page 698 of the 41st edition of Archbold.

The principal rule which the Courts in England follow and which I cited - that it should be accepted as normal practice that an order should be made for costs of an acquitted defendant out of central funds - is really irrelevant because that has to do with the statutory arrangement in England. But it is the normal procedure which has to be followed in this Court and we can see no reason why it should not be followed in the Magistrates' Court below. The learned Magistrate seemed to indicate that he was free to depart from Bouchard. We do not think, with respect, that he is entitled to do so, although he is quite right when he pointed out that the exceptions to that rule are by no means closed and there are a number of other reasons, apart from those cited in Archbold.

He appears, so far as the question of guilt is concerned to have accepted that Miss Douglas was acquitted because the weight of the evidence did not come up to legal proof of guilt, but that seems to indicate to my mind and the Court's mind that he was applying a sort of in-between test. That there may well have been sufficient evidence in a civil case, or there is even a grave suspicion that although the evidence did not pass the legal proof of guilt it was nevertheless sufficiently strong to deprive Miss Douglas of her costs. If that is what he meant then with respect I cannot see that that is logical reasoning and it is not the way to approach the award of costs in criminal cases.

A secondary reason which the Court took into consideration was the differing practice in the lower courts of Jersey and England. Again, with respect, we are unable to see that because costs are seldom awarded against a defendant, it must follow that a successful defendant cannot apply for costs, or that the rules should be whittled down because of that practice in the Police Court, about which we make no comment. If it is indeed a practice that costs are not

awarded against defendants it is not something which the Court would wish to continue. Quite often in this Court costs are awarded and we think on the proper occasion costs should be awarded against an unsuccessful defendant where the appropriate circumstances apply. For the secondary reason we think it really quite irrelevant and not one that can be placed in the balance and certainly it is not one of the exceptions which might be applicable in addition to those mentioned in Archbold.

Therefore for these reasons we think that the learned Magistrate misdirected himself and accordingly the appeal is allowed with costs.

Authorities referred to:

AG -v- Bouchard (6th April, 1983) Jersey Unreported.

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