

ROYAL COURT
(Samedi Division) } |

16th January, 1995

Before: The Deputy Bailiff, and
Jurats Orchard and Herbert

Police Court Appeal
(The Magistrate)

Stephen Comer

- v -

The Attorney General

Appeal against conviction on 4th November, 1994, on a not guilty plea to:

1 count of grave and criminal assault.

Advocate N.C. Davies for the Appellant.
J.G.P. Wheeler, Esq., Crown Advocate.

JUDGMENT

THE DEPUTY BAILIFF: Stephen Comer appeals against his conviction for grave and criminal assault in the Police Court on a number of different grounds.

5 The appeal is not opposed by the Crown on the basis that the Magistrate made certain remarks during the hearing of an application for bail which took place during the proceedings in the Police Court which were injudicious. The passages in question read as follows:

10 ADVOCATE DAVIES: *I would ask you to consider, Sir, that on the basis of the evidence we have heard today either Mr. Bishop or the police eye witnesses are lying. It is physically impossible for them all to be telling the truth. If Mr. Bishop is telling the truth the fight took place entirely in the recessed entrance to the 'Buzz' Bar and it finished with him pushing Mr. Comer down the*

15 *step. If the police evidence is true, then the fight took place*

in an entirely different place on the pavement outside and Mr. Bishop ... (inter)

5 JUDGE SOWDEN: No, I am quite satisfied from the evidence that I have heard that there were two incidents which are capable of being separated. This is on the evidence I have heard so far and I have yet to hear the defendant and I have yet to hear any of his witnesses, or Mr. Toporis, if he can be persuaded to come to Court. And what I have heard so far, the first incident, the 10 first violence, was a head-butt delivered by the defendant to his victim. That took place in the recess. I am quite satisfied with that. Then in some way or other the assailant, that is the defendant, and the victim were on the pavement and the fight continued. But, it appears on the evidence I have so far heard, 15 to have been a very one-sided fight where punches were being rained upon the victim by Mr. Comer and it was that second time which was witnessed by two officers who happened to be attending those premises and who were in plain clothes.

20 The second exchange comes shortly after in the transcript.

25 ADVOCATE DAVIES: The point that I am making, Sir, is that the prosecution evidence is not consistent. Somebody is lying. I don't believe that we can accept what all of the prosecution witnesses have said on its face value, there are too many differences in the two stories. I believe, during the course of the defence, I will explain the reason for those inconsistencies.

30 JUDGE SOWDEN: Well, I am quite satisfied that the two officers to whom I am referring gave their evidence absolutely truthfully. Quite satisfied. So do carry on.

35 We agree with both counsel that these passages could have given the Appellant the impression that the Magistrate had made up his mind on important matters of fact before hearing evidence for the defence. We are sure that the Magistrate had not in fact made up his mind because, amongst other reasons, he himself said in the course of one of the passages to which we have referred that he had yet to hear the evidence for the defence.

40 It may be that these difficulties resulted from the Magistrate being prepared, no doubt out of a desire to help the Appellant's counsel, to engage in dialogue with her during the course of the application. Judicial interventions during an address by counsel can sometimes be helpful but we think that that 45 was not the case here.

However, justice must not only be done, but be seen to be done and on that basis we agree with both counsel, as we have

said, that this appeal must be allowed. We accordingly quash the conviction and we make no further order having regard to the submission made by Mr. Wheeler for the Crown. The only other matter, of course, is that the Appellant will have his costs.

No authorities.