

ROYAL COURT  
(Samedi Division)

24th July 1997 144

Before: Sir Philip Bailhache, Bailiff, and  
Jurats E.J.M. Potter and Querée

Police Court Appeal: The Assistant Magistrate.

|          |                                |            |
|----------|--------------------------------|------------|
| Between: | B                              | Appellant  |
| And:     | Her Majesty's Attorney General | Respondent |

On 12th July, 1996, the appellant pleaded not guilty in the Magistrate's Court to: 2 counts of assault (counts 1,2); 1 count of malicious damage (count 3); and 1 count of exposing his child, whilst having her in his custody, in a manner likely to cause unnecessary suffering or injury to health (count 4), and was remanded on a conditional warning to appear.

There followed several further remands on the same terms and conditions.

On 20th February, 1997, the appellant changed his plea to guilty on counts 1 and 2 and renewed the not guilty pleas on counts 3 and 4, and was remanded on same terms and conditions.

On 28th April, 1997, charges 1-3 were held over; charge 4 was heard and was found proved. The accused was remanded on same terms and conditions to 26th May, 1997, for sentencing.

On 6th May, 1997, the appellant lodged a notice of appeal against conviction.

On 14th July, 1997, the Royal Court dismissed the appeal; reasoned judgment to follow.

Advocate M.P.G. Lewis for the appellant.  
Advocate Mrs S.A. Pearmain for the Attorney General.

Reasoned JUDGMENT

5 THE BAILIFF: This is an appeal by B against his conviction by the Relief Magistrate on 28th April, 1997, of a contravention of Article 9 of the Children (Jersey) Law 1969 in that he "having custody of his child, namely C one year old, expose [sic] her in a manner likely to cause her unnecessary suffering or injury to health". On 14th July we heard argument at the end of which we dismissed the appeal and stated that we would give our reasons at a later date. This we now proceed to do.

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The facts may be briefly stated. The appellant was apparently involved in some altercation and the police were called to the area.

When the police arrived the appellant was found sitting astride according to one witness, or crouching, according to a police witness, on a narrow wall between two roofs. Cradled in one arm was his twelve months' old child who was apparently crying and in some distress. The top of the wall was some ten feet from the ground. The appellant was abusive towards the police and had clearly been drinking alcohol. He refused to comply with requests from the police to hand down the child. Later he was observed sitting in an open window with the upper half of his body and the child outside; underneath the window was a drop on to a steel staircase. He was agitated and irrational. The police were, not surprisingly, very concerned for the safety of the child. Eventually the appellant was restrained and the child was rescued. Subsequently he was charged with the offence and convicted. The Relief Magistrate expressed his finding in the following terms:

*"Judge Short; my finding is I hope not an over-simplification, but under Article 9 I see the word "exposed" here and at number 6 I have the definition of exposed from the shorter Oxford English Dictionary, and the derivative of expose is ponere, which is basically to place. Now, that is what I think Mr. B did, he placed that child in a manner likely to cause him [sic] unnecessary suffering or injury to health which is squarely within the statute. In the same way as if a drunken father placed his child in the middle of a railway line and snatched it back just before the train came, or hung it out of a car window because it was screaming. I think it is a matter of plain meaning of the statute. I found no ambiguity here, and I am satisfied for that reason."*

The ground of the appeal is that the conviction was wrong in law. Mr. Lewis, who argued the appellant's case with considerable skill, submitted that the word "exposed" in Article 9 meant to leave without shelter or unprotected from the weather. It was suggested that there was no evidence that the child had been "exposed" in that sense.

Mr. Lewis drew our attention to a number of authorities but in particular to the case of R v Williams (1910) C.C.A.89. That was a case where the appellant had been charged with neglecting and exposing his three children contrary to Section 12 of the Children Act 1908. The relevant words of that section provided:

*"If any person over the age of 16 years, who has the custody, charge or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or young person ... in a manner likely to cause such child or young person unnecessary suffering or injury to health ... that person shall be guilty of a misdemeanour".*

We observe in passing that the phraseology of that statutory provision is in very similar terms to that contained in Article 9 of the Children (Jersey) Law, 1969. The facts of the case were that the appellant had gone to a workhouse to which his wife had taken their three children and removed them with the intention of going to a lodging house some thirty miles away. On the way they arrived at Chepstow on a cold wet night. There the appellant was told that there were no beds available at the hostel and he declined the offer of a room with a fire to sit up in all night, and he moved the children on. It was argued

that there could be no "exposure" of a child without abandonment. In dismissing the appeal Darling J stated:

5           *"Counsel has contended that to "expose" means to physically place children somewhere with intent to injure. The statute, however, tries to prevent unnecessary suffering, and the prisoner had dragged the children about the roads instead of providing them shelter."*

10           Counsel submitted that this case was authority for the argument which he was advancing as to the meaning of "expose", i.e. to deprive of shelter. We cannot except that submission. In our judgment the English Court of Appeal decided, on the facts of that case, that there was "exposure" of the children within the meaning of the section. But  
15 Darling J was at pains to point out that the statute *"tries to prevent unnecessary suffering"*.

          We remind ourselves that the heading to part III of the Children (Jersey) Law, 1969 is *"Children exposed to physical and moral danger"*  
20 and that the heading to Article 9 is *"Cruelty to children under 16"*. The intention of the legislature is clear and we see no grounds for giving the word "expose" an unduly restrictive meaning. We were referred to a number of dictionary definitions. In our judgment the appropriate and relevant definition for the purposes of Article 9 (1) of  
25 the Children (Jersey) Law 1969 is the first definition given in Chambers 20th Century dictionary viz *"to lay forth to view"*. By carrying the child along a high wall in a drunken state the appellant "exposed" her in this sense *"in a manner likely to cause [her] ... injury to health"*.  
30 By a slightly different route we arrive at essentially the same conclusion as the learned Relief Magistrate. It was for these reasons that the appeal was dismissed.

Authorities.

Children (Jersey) Law 1969: Article 9.

AG -v- Howard (1974) JJ 105.

AG -v- Corbière Pavilion Hotel Limited (1982) JJ 173.

AG -v- Gallichan (1982) JJ 249.

New Guarantee Trust Finance Limited -v- Birbeck (1980) JJ 117.

Children Act 1908.

Children and Young Persons Act 1933 - ss 1-11.

Archbold (1996 Ed'n) paragraphs 19-290 to 19-306A.

Words and Phrases Legally Defined (Volume 2) p. 205.

Chambers 20th Century Dictionary p. 444.

The Concise Oxford Dictionary: Introduction: p.p.ix and x; p.340.

The Shorter Oxford English Dictionary: p. 658.

4 Halsbury 44 (1) paragraphs 1393, 1411, 1412, 1416, 1487.

Cross: Statutory Interpretation, (3rd Ed'n): p.p. 49, 140-141.

R -v- John Owen Williams (1910) C.C.A 89.

Law Reports Digest of Cases (1865-1899) Vol.11 (1811).