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ROYAL COURT

28th November, 1988

Before: Commissioner Hamon and
Jurats Lucas and Bonn

Her Majesty's Attorney General

- v -

Colin Laird

Appeal against conviction
on one count of assault, on
the 27th June, 1988.

Advocate S.C.K. Pallot for the Crown
Advocate T.J. Le Cocq for the appellant.

JUDGMENT

COMMISSIONER HAMON: Just before eleven o'clock at closing time on the evening of the 15th April, 1988, a disturbance took place outside 'Friday's' wine bar, Halkett Place. Robert Gregory and his wife who were visiting the Island on holiday went to have a drink at 'Friday's' with Miss Carol Ann Somerville and her boyfriend, Mr. Jean-Pierre Shaw. Mr. Colin Laird is the licensee of 'Friday's', he has been fifteen years in the trade and five years as a licensee in Jersey. Paul Elliot-Rhodes was on duty as a doorman and had had some six or seven years' experience. Five or six barmaids were on duty at the bar. Mr. Laird's wife was in the bar. She was for a time

drinking with her husband. There is no need to analyse the whole evidence in detail; perhaps nothing would have happened if an argument had not arisen between Mr. Gregory and Mr. Paul Elliot-Rhodes. It seems to have arisen over a trivial matter. Mr. Elliot-Rhodes insisted on Mr. Gregory leaving the premises. Mr. Gregory wished to wait for his wife who was in the ladies' toilet. Mr. Elliot-Rhodes tried to escort Mr. Gregory from the premises and a general scuffle broke out which led to Colin Laird being charged with assault on the person of Carol Ann Somerville, Jean-Pierre Shaw being charged with assault on Colin Laird, and Carol Ann Somerville being charged with an assault on Colin Laird. In the result Jean-Pierre Shaw changed his plea to one of guilty and the charge against Miss Somerville was dismissed.

The assault occurred in one relatively brief moment and it happened like this: Miss Somerville had jumped onto the back of Mr. Laird, pulling his hair and scratching, while (according to his evidence) he was struggling with Mr. Shaw. We have to bear in mind of course that an independent witness told the Court that he was in fact holding Mr. Shaw when the assault took place. Mr. Laird said he stumbled on the steps, Miss Somerville went over - she may have been struck - and as Miss Somerville was getting up she received what can only be described as a deliberate kick in the face.

The argument, very ably put by counsel both in the Court below and here, was that Mr. Laird, having been attacked by Miss Somerville from the rear, having thrown her to the ground, not realising that it was a woman that he was dealing with, took defensive action, acted in self-defence, and kicked her in the face because he thought he was about to be attacked again.

Character did not enter into the matter as the learned Magistrate had the records (where appropriate) of all those concerned.

The case lasted for a considerable time and the learned Magistrate was clearly concerned enough about the matter that he decided that he would leave the matter over the weekend while he considered it.

The Court has examined and been taken by both counsel carefully through all the evidence and there is of course some conflict in that evidence. Unfortunately, when the Magistrate returned after his weekend's deliberation, the only indication that he gave as to how he had reached his decision was in these words: "I am going to announce my decision on Mr. Laird and having had the weekend to think the matter over and look at the evidence again I have to say that I am satisfied on the assault charge". He then went on to say: "I will say at once I am prepared to say that he did not know that it was a woman at the time because if he had known I think that something else would have happened".

The law was very carefully put to the learned Magistrate and in fact the law is clear and comparatively simple. At one stage before he withdrew the learned Magistrate said: "It is very difficult and yet I have got to judge to a nicety whether he judged to a nicety". That is of course in direct conflict with the principle of law that he had to decide. Had the Magistrate made his decision immediately thereafter we might have decided this matter differently.

I think that Mr. Laird did act in self-defence. I say that because I put a question to counsel for the Crown where I asked him to say without any doubt whatsoever as to whether he was saying that the Crown's submission was that Mr. Laird had acted initially in self-defence and had gone too far, or whether his act was one of aggression. He said it was not an act of self-defence, it was an aggressive act. But then Mr. Pallot went on to say that he thought that at the time that the punch was thrown at Miss Somerville, that was an act of self-defence and I consider, Mr. Pallot, that it is almost impossible for you to say that at one stage you have an act of self-defence which then moves on almost instantly to an act of aggression. We have looked at this matter, in the context of whether or not it was self-defence. I will not analyse all the evidence again, but the question that the Court has to ask itself is: was Mr. Laird defending himself? Was he justified in defending himself but in doing nothing more than was necessary for his own defence? It is of course permissible to use force not merely to counter an actual attack but to ward off an attack honestly and reasonably believed to be imminent.

I am sorry to have to say that the Court is divided and never the twain shall meet. One of the learned Jurats feels very strongly that this was an act of self-defence. However the other feels equally strongly that it was an act of aggression. In the circumstances I must then cast my vote into the melting pot. With very anxious consideration in the circumstances I find that the learned Magistrate was right. Now, I say that not to support the learned Magistrate on public policy, but merely on this basis: this Court has had an opportunity to read all the evidence. The learned Magistrate had a very much better opportunity than this Court will ever have, that is he had the opportunity to see all the witnesses for himself. He was able to weigh up in the balance the evidence that was given and that of the totally independent witness who came forward and who was very emphatic in what he saw happen, Mr. Nicholas Henry Symonds. The evidence that Mr. Symonds gave was not in any sense watered down in cross-examination and in fact as far as we are concerned, Mr. Symonds stood by his story and his story went to the Magistrate in the form that he delivered it. We feel that the sentence was perhaps a little stern in the circumstances. Mr. Laird over-reacted, but I cannot see that there are grounds for having his conviction set aside. Because Mr. Laird has to think of his position as licensee, the Court will go on record as saying that we do not regard this matter as being very serious and it must have hung very finely in the balance. The appeal is dismissed.

Authorities referred to in argument:

Archbold (36th Edition): p. 981, para. 2646.

Archbold (42nd Edition): p. 1663, para. 20-128; p. 1613, para. 20-21.