

ROYAL COURT  
(Samedi Division)

223.

14th December, 1992

Before: The Bailiff, and  
Jurats Orchard and Herbert

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MG

- v -

The Attorney General

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Police Court Appeal.  
Appeal against conviction on 1 count of assault.

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Advocate G.R. Boxall for the appellant.  
Advocate Mrs. S.A. Fearmain on behalf of the  
Attorney General.

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**JUDGMENT**

**THE BAILIFF:** On 15th July, 1992, the appellant was convicted by the Juvenile Panel of assaulting Woman Police Constable Whitley. He appeals to this Court against his conviction principally on the ground that during the course of the evidence it was disclosed inadvertently to the panel, not so much to the presiding Magistrate, but to the lay members of the panel that the accused,

if not actually having a record, had been involved in some sort of criminal activity. Accordingly, it would be wrong to allow the conviction to stand because that reference might have turned the scale against the accused by sowing seeds of doubt in the mind not of the Magistrate but of his assistants on the panel.

Mr. Boxall, for the appellant, made it clear that had his client been a little older and had he been tried by the Magistrate alone, he would not have made the same submissions. It is quite true, and we accept his submission that the members of the panel are laymen and should be treated as a jury; Mrs. Fearmain, for the Attorney General, suggested that they were halfway between a jury and this present bench of Jurats. We take the view that, in the absence of an open direction by the learned Magistrates to the lay members of the panel which could be examined and if necessary appealed, we are unable to say that the passages relied upon by Mr. Boxall did not influence the panel members.

I have to say, however, that had we been deciding this appeal solely on the weight of evidence, we would have decided that the appeal had no merit in it. But that is not the position, we have to decide as a preliminary issue whether it is safe to allow the conviction to stand in view of the matters raised by Mr. Boxall.

If one looks at the four pages of the transcript where some reference was made to the accused against which Mr. Boxall appealed, one finds that they are not of a serious nature, but as he said, they are cumulative, in particular the references on p.14 where the words "to the detriment of the accused" are very closely followed by the words "a drugs matter". It is clear to us that there is a drugs problem in the Island. We have no doubt that the panel would have been alerted to that fact and knew it and the words "a drugs matter" might well - we cannot say for sure whether or not they did - have implanted in their minds a belief that he

had been involved criminally with drugs previously, even though Mrs. Pearmain pointed out that the appellant could have been a witness or a party.

We have taken the three tests set out in Keane's "Modern Law of Evidence": the explicitness of the references; we think there was sufficient explicitness; the rôle of the defence in eliciting that evidence: this was minimal; and the effect on the minds of the panel: we have already touched on this. We have had the English case of Weaver & Weaver (18th November, 1966) Court of Appeal (Criminal Division) referred to us, where these matters were dealt with; and the case of Aubert -v- A.G. (17th December, 1988) Jersey Unreported C.of.A.; (1987-88) JLR N.10 where the question raised by the Court of Appeal was whether the evidence complained about in that case turned the scale against the accused. I have used those words, "turned the scale" before; and they are the important words. We cannot say in our minds that we would be satisfied that the cumulative effect of the references could not have turned the scale against the accused. Accordingly, coupling that with the well-tried but nevertheless accepted maxim that justice must not only be done, but be seen to be done, we allow the appeal and quash the conviction.

Authorities

Weaver & Weaver (18th November, 1966) Court of Appeal (Criminal Division),

Aubert -v- A.G. (17th December, 1988) Jersey Unreported C.of.A.;  
(1987-88) JLR N.10.

Keane: "Modern Law of Evidence" p.p. 326-7.