

ROYAL COURT
(Samedi Division)

190.

23rd September, 1994

Before: The Deputy Bailiff, and
Jurats Vibert and Rumfitt

The Attorney General

- v -

Stephen Comer

Application for review of the Magistrate's decision to refuse bail.

On 27th June, 1994, the applicant pleaded not guilty in the Magistrate's Court to one charge of grave and criminal assault, and was remanded in custody, with no bail option.

On 1st July, 1994, the applicant was granted bail by the Royal Court.

On 20th September, 1994, the applicant's bail application was refused in the Magistrate's Court and he was remanded in custody.

The Attorney General.
Advocate P.C. Harris for the Applicant.

JUDGMENT

5 THE DEPUTY BAILIFF: As will be apparent, the Court has given anxious consideration to this application. It is trite law that the Court, in reviewing the decision of the Magistrate to refuse bail and to remand the applicant in custody, is not to substitute its own view of the matter, but has to consider the quality of the Magistrate's decision.

10 The Magistrate's decision here was based upon the view at which he arrived that there had been intimidation of at least one witness. In reaching that conclusion the Magistrate relied upon four matters.

The first matter was that there was evidence that a doorbell had been rung at the alleged victim's home and that the

perpetrator had then driven away at a fast speed. There is, however, no evidence to associate that action with the applicant.

5 The second incident involved an occasion when the applicant went to the house of a friend called Joanne, and tried to make contact with her. Joanne lived in a flat which was immediately opposite the home of the alleged victim in Upper Clarendon Road. The Magistrate formed the view, which he expressed, that this amounted to a breach of the condition imposed by this Court, when 10 it granted the applicant bail, that he should not approach Mr. Bishop, or his family directly or indirectly. In the view of this Court the action of the applicant did not amount to such a breach of the bail condition.

15 The third point relied upon by the Magistrate was that the evidence given by a witness, Chatterley, in the Police Court, changed fundamentally from the evidence which he had given to the Police and which was recorded in a witness statement. We shall return to that in a moment.

20 The fourth point upon which the Magistrate relied was that a Mr. Toporis, who has not yet been heard in the Police Court, had given a statement to the Police which indicated that he had seen nothing of the alleged assault, whereas it was clear from his presence at the scene that he must have seen something. The 25 evidence of Mr. Toporis, however, has not changed from the moment that he gave his statement to the Police and there can, therefore, be no question of intimidation of Mr. Toporis since bail was granted by this Court.

30 Returning therefore to Mr. Chatterley, the Magistrate heard his evidence and reached the conclusion that Chatterley had been intimidated. The Magistrate was entitled to reach that conclusion and it is not for this Court - which has not heard that evidence 35 nor had the opportunity of viewing the demeanour of that witness - to substitute its own view.

40 On the other hand, the witness, Chatterley, has, as we have stated, already given his evidence and the question of intimidation would only be relevant if the applicant were to be remanded for trial by this Court. That brings the Court on to the question of delay.

45 This applicant was charged with committing a grave and criminal assault, on a date which is not clear from the papers before us, but which must have been some time in June, 1994. He has now been remanded before the Police Court for a continuation of the hearing on 4th November. We are concerned at the time 50 which appears to have been taken to bring a relatively simple case to fruition.

The Attorney told us that in his view the defendant, if convicted, would not receive a sentence, or certainly would not be recommended by him to receive a sentence of more than six months' imprisonment.

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If the applicant is remanded in custody to the 4th November, he will already have served the equivalent of some three months' imprisonment. On that basis we have reached the conclusion that the decision to remand the applicant in custody was unreasonable and we accordingly grant the application and will grant the applicant bail on the same terms as were granted by this Court on 1st July, 1994.

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No authorities.