

JERSEY / JUDGMENT

# AG -v- Barton and Ors [2010]

## JRC 201 (05 November 2010)

[2010] JRC 201

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### JUDGMENT

THE DEPUTY BAILIFF: 1. The principal offences for which you are now to be sentenced relate to an incident in the early hours of the 25 th June this year, when a fight took place in St James' Street in which you three were identified. It appears to have been started by Mr Barton who was violently kicking a front door in the street. Thereafter, Mr Kelly came out brandishing a knife and Mr McGahey came out brandishing an iron above his head. One witness described the incident as "a vicious fight" and said that the men were all punching each other in a very violent manner. This witness said the knife was being used as a weapon and as a deterrent to threaten the other two guys. The witness went on to say "I had concerns about my own safety and what might happen". A further witness describes the man with the iron, McGahey, as not actually using it as a weapon. A different witness said "I felt really bad. I didn't like what I saw at all". She estimated the whole episode lasted about thirty minutes. Another witness saw the fight and he said "The whole incident was disturbing and upsetting due to the amount of violence involved". It seems quite clear that this incident was alcohol-fuelled; there were a number of people causing disturbances on the streets of St Helier, and they caused innocent people to be in fear for their own safety. This is the very conduct the Court has been anxious to tackle by the policy of imposing substantial custodial sentences for violent offences at night on the streets of St Helier, and I make that plain at the outset. 2. Mr Kelly, in so far as you are concerned, you and Mr McGahey are charged with affray, which is the more serious of the offences, and the Court must therefore distinguish between the conduct for which you come to be sentenced and the conduct of Mr Barton, as indeed the Crown has distinguished in its conclusions. You took out with you a seven inch knife; the Court has seen the weapon and it is quite clearly one with which serious damage could have been done and it is fortuitous that no-one was badly injured with it. You could have rung the police; you could have stayed inside and rung the police and ask them to come instead of which, you decided to arm yourself with a knife and sort it out yourself. 3. Similar considerations Mr McGahey go for you. You could have rung the police and for the reasons that we have given we think that there is no alternative for us but to impose the sentences which the Crown has moved for on the charges of affray and in saying that we have taken into account all the factors in mitigation which have been raised by your respective counsel. We accept that this was relatively spontaneous in the sense that you were faced with a problem but nonetheless, this was not the

way to deal with it and the result was, as I have said, a drunken fight on the streets of St Helier. 4. Mr Barton, the Court has approached your case slightly differently because it is clear from your previous record, which is truly appalling, that you have had a number of previous convictions which show you to have been coming up to a crisis in June when this offence took place; and it is noteworthy from the offences which you committed in April and May and then again in June. However since then it is clear that you have not committed further offences. The Court has been impressed with the letter which your girlfriend has sent to us and is impressed also by your own letter, but most of all, has been impressed by the fact that since June, despite this crescendo of activity up until June, there has been no recurrence of difficulty. One swallow does not make a summer however. You still fall to be sentenced for the offences which you have committed. What we are going to do in the sentence we now impose is to take account of the substantial progress that appears to have been made and we are going to suspend the sentence which is going to be imposed; you should be very aware that if there is any falling off from those standards which are required by that suspended sentence, if you are back in trouble for any reason at all, the sentence will have to be served. 5. Turning to the Indictment Mr Barton, on Count 2 of the Indictment you are sentenced to 2 weeks' imprisonment, on Count 3; 2 weeks' imprisonment, concurrent, on Count 1, which was the major offence, we do not consider the Crown's conclusions to be high enough because it was your conduct which actually started the more serious offences committed by your curfews and so we sentence you to 6 months' imprisonment, making a total of 6 months and 2 weeks imprisonment. However we suspend that for 2 years and it follows therefore that if you commit any further offence during that period that is the sentence that you will have to serve. We add to that an Exclusion Order for 12 months, in accordance with the present bail conditions, running from today and we also add to that a Supervision Order in accordance with the law. That requires you to keep in touch with the supervising officer from the Probation Service in accordance with instructions given to you by that officer and requires you to notify the officer of any change of address. 6. Mr Kelly you are sentenced on Count 4 to 18 months' imprisonment and on Count 1 to 2 weeks' imprisonment, concurrent, making a total of 18 months' imprisonment. 7. Mr McGahey, you are sentenced to 18 months' imprisonment on Count 4 of the Indictment, for which you fall to be sentenced today. 8. We order the forfeiture and destruction of the drugs and the knife. Authorities AG-v-Shewan 1999/22. AG-v-Bree

[2005] JRC177. AG-v-Skinner

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