

JERSEY / JUDGMENT

AG v Correia [2024] JRC 237 (08 November 2024)

[2024] JRC 237

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JUDGMENT

THE COMMISSIONER: 1. The Court sat on 4 November to pass sentence on the Defendant who was convicted after a trial on an indictment containing one count of domestic abuse, contrary to Article 3 of the Domestic Abuse (Jersey) Law 2022 (the "Law"). The charge was as follows: "Andre Correia, between 21 June 2023 and 12 February 2024, in the Island of Jersey, when personally connected to [the Complainant], a person aged over 16, on at least two occasions intentionally or recklessly engaged in behaviour towards her which was abusive, and that behaviour caused or was reasonably likely to cause her harm, namely that he: a) controlled when [the Complainant] was allowed to go out and who she could see, b) messaged and called her multiple times when she was out, c) sent insulting and abusive messages, d) caused damage to furniture and property, e) spat in her face, f) pushed and slapped her, g) threatened to kill or hurt her in messages and in person, and h) was abusive and threatening when attending her property on 10th and 11th February 2024". The sentence passed was 15 months' imprisonment and the detailed reasons for the sentence were reserved. This judgment contains those reasons. 2. The period covered by the indictment was 21 June 2023 to 12 February 2024. Although the Crown put before the Court evidence that suggested that the Defendant would have been guilty of the offence before 21 June last year if the Law had then been in force, we disregarded that evidence because it was not. 3. The particulars of offence were set out in an amended indictment, with leave. The Court found that particulars (a), (d), (e) and (f) were not proved, and that as far as (g) was concerned, the Defendant did send messages threatening to kill or hurt the Complainant, but he did not ever make those threats to her in person. As to (h), the Court found that the Crown had not proved its case in relation to two incidents on 10 February but had done so in relation to the incident on 11 February at 5.50 pm or so - on that occasion, the Defendant attended at the flat, which she had occupied with him during their relationship, to collect his things, that relationship having then been ended by her, and banged on the door waking up both her and a friend staying with her, and the child of the union with the complainant who was aged just over a year. When the Complainant told the Defendant to go away, he went to get a hammer from the tool shed and tried to open the door with that. This was clearly extremely frightening for the complainant and her friend, as is apparent from the recording of the complainant's 999 call to the police at that time. 4. This incident marked the end of a relationship in which the Court found the Defendant had been

coercive and controlling for the purposes of the Law by messaging and calling her frequently when she was out; and sending her a number of threatening and abusive messages, including messages to kill or hurt her. The Court does not think there was ever any intention on his part actually to kill or hurt her and that these messages were sent in an emotional frame of mind, but that does not detract from the fact that they were sent and must have caused the Complainant distress and worry. 5. It is right that we give a flavour of those messages. On 12 November 2023, the Defendant sent the Complainant 22 messages in 6 minutes. There was a further barrage of messages including " You will learn what life is, believe, god will show you how it is Cherry bag ". On 2 February 2024, there was another rash of 37 messages in 34 minutes. including " Believe that I will lose it and break all this fucking things inside here, will go up there for a few days, but believe that I won't leave anything inside here undamaged, all these fucking things " ; " My wish was to squeeze your neck until you were purple " , " go fuck yourself " ; " girl you are out all day " ; " who are you speaking to? " ; " Fuck, say anything else that I don't like and you will see how I will fuck all your life " ; " I will fuck your life, fuck " ; " You will learn one thing in life, you won't mess with me ever again, I will teach you your place " ; and similar messages. 6. There was a time when one might see messages of this kind and conclude that the sender was rude and boorish and that if one was unfortunate enough to have any sort of relationship with such a person, one should get out of that relationship quickly and leave it at that - a learning experience otherwise best to be forgotten. Communities here and elsewhere have come to realise, however, that such behaviour is not best swept away like that, not least because many victims of it are not able to get away and may be increasingly exposed to serious risk of injury if not worse, or because they are themselves scarred in their approach to future relationships; and because any children for whom they are responsible take similar scarring with them as they grow up. That is why the presence of, effect on or use of children in the commission of the offence of domestic abuse is an aggravating factor under Article 4 of the Law. Furthermore, those responsible for that behaviour are likely to take similar conduct into their next relationship and cause equal or perhaps worse damage there. The public interest lies firmly in tackling head on that and other similar conduct which disrespects significantly the personal lives of others, and the courts must play their part in achieving as far as possible what the Law is in our judgment intended to do. 7. It is in one respect a strangely drafted law. The offence of domestic abuse includes behaviour which involves several existing criminal offences such as assault, grave and criminal assault and some sexual offences, for which the possible sentence is at large; and it would be odd to contemplate, for example, that the sentence for what was a grave and criminal assault must necessarily be contained or even affected by the 5 year maximum sentence which is provided by the Law. In our judgment, further thought should be given by the legislature to this legislation, which is capable of causing confusion where none previously existed. Even though an offence of assault within the relationship may be relevant to the defendant's controlling behaviour more generally, and thus to the sentence to be imposed, there is no obvious reason why the offence of domestic abuse should not be confined to coercive or controlling behaviour, as appears to be the position in at least one other jurisdiction. Such an approach would leave the existing criminal offences to cover what they do, in the knowledge that the Courts treat assaults on partners just as seriously, if not more seriously, as assaults on third parties barely known to the defendant. It is for example, an aggravating factor if the assault on a

partner is committed within the home and there are many authorities to that effect. 8. We also note that the Report accompanying the projet P.69/2022 describes the rationale in this way: "Whilst the existing framework of statutory and customary law in Jersey that can deal with some of the behaviours associated with domestic abuse, (assaults, criminal damage, sexual assaults etc.) current legislation cannot recognise coercive and controlling behaviour and the patterns of behaviour that constitute domestic abuse. By only identifying specific offences, such as an assault, the current law only identifies 'snapshots' of a victim's experience, and although the courts are robust in addressing offences which they feel have taken place in the context of an abusive relationship, there is no way of engaging with the wider pattern of coercion and control that characterises many abusive relationships. This draft Law will ensure that domestic abuse is defined as a specific offence and will recognise those patterns of behaviour. Recognising controlling and coercive behaviour as a component of the domestic abuse offence will provide some protection for victims suffering long-lasting harm from abusive behaviour. It is also intended that the involvement of a child or someone who is pregnant will be an aggravating factor to any offence under this law. This will provide greater protection to victims of mental and physical abuse." The Report thus shows that adding what was already criminal behaviour into a new offence was not the real purpose - which was to catch, within a new offence, coercive or controlling behaviour. 9. Be that as it may, and recognising the laudable intentions of the Law as described in paragraph 6 above, it is also to be noted that the Law involves the criminal courts in entering the domestic lives of the island's citizens, analysing where necessary their ordinary day to day relationships. There are risks in doing so because there is a range of offending within this category of offence, some of it relatively trivial and some very serious indeed; and while the Law is there to be enforced, law enforcement authorities and the courts should be cautious in taking the criminal law into relationships which, while not perfect, are brim full of what used to be described as the "ups and downs" of life with a spouse or partner. The consequences of the latter may well disrupt relationships where the problems could have been worked through and go far beyond what the framers of the legislation contemplated both for the spouses and/or partners and their dependants. 10. It is in that context that we have approached the sentence in this case. Before coming on to our reasons for the sentence on these particular facts, we should review what has been said in the relatively few cases of domestic abuse under the new Law which have engaged the Royal Court so far. 11. The first was the case of AG v Veloso

[2024] JRC 094 . That case involved a defendant who had during the relationship with the complainant spat at her and called her a " fat slag ". Shortly after the relationship ended, when the complainant returned home from work, she noticed that the windows in her flat had been closed where she had left them open. She also noticed that a teddy bear which held great sentimental value for her was no longer on her bed. She telephoned the defendant who confirmed that he had the teddy bear and said that he would drop it to her later that evening. On arrival at the flat, the defendant barged his way in telling the complainant that the teddy bear was at his home and she went with him to collect it. When he returned from his home to the car he indicated that the teddy bear was down his trousers. There was an altercation between them but when they returned to the

complainant's flat the defendant threw the teddy bear at her. He appears to have remained there for that night. The following morning his mood had changed and he told the complainant he hated her and picked up her telephone, throwing it against the wall and damaging both it and the fireplace. About a week later the defendant gained access to her accommodation and hid in the loft while the complainant was explaining to the police why she thought it was he who had removed the electric fuses in four appliances in the property. 12. Of the offence under Article 3 of the Law, the Bailiff said this: " 3. This is the first time, as far as we are aware, that this offence has fallen to be sentenced by the Court. 4. Domestic abuse is a serious offence and very often it will be appropriate to meet it with a sentence of imprisonment. The understanding of the harm done by domestic abuse has grown significantly over the last few years and the Court, and wider society, has developed an increasing understanding of how insidious and damaging it may be. 5. That being said, domestic abuse can of course come in a multiplicity of different guises and be represented by very different types of behaviour over different periods with differing effects. In such cases the Court would generally wish to understand the nuance of the relationship between the abuser and complainant, and the Court must be astute to understand the gravamen of what has happened in terms of culpability and harm and otherwise, as well as the particular consequences on the complainant and any particular features of the abuser. " 13. Having noted the victim impact statement and in particular the fear expressed by her that the defendant had had access to her accommodation when she was unaware of it, the court, in imposing a non-custodial penalty of probation and a period of community service said this: "He has pleaded guilty, the offending was over a short duration, there was no violence involved and although his behaviour was wholly unacceptable, we can think of many occasions where domestic abuse will take a far more serious form. We do not doubt that the Complainant was frightened by his behaviour, but we also take into account the challenges that this Defendant has faced and perhaps continues to face." 14. The next case is AG v MacBrayne [2024] JRC 120. The defendant was 23 years old, and the complainant a year younger. The facts of that case were described by the Deputy Bailiff in this way: "2. During this time you assaulted her, abused her and caused her physical and psychological harm. The offence of assault at Count 2 on the Indictment took place on 18 September 2023. That night you went out drinking, whilst the Victim stayed at home. You returned at midnight. Your Victim was concerned that you should not get drunk during the week when you had just started a new job. You attempted intimacy with her in bed and when she rejected you, you repeatedly punched her in the face. You accept you punched her at least five times. She shouted 'stop' repeatedly but you carried on assaulting her.

3. When you stopped assaulting your Victim, she wiped her face with a tissue, noting blood, and locked herself in the bathroom. She was in pain for three days but did not sustain bruising. She took photographs of her face as a record of what you had done and you tried to get her to delete those photographs.

4. As to the domestic abuse which you admitted, you are responsible for a pattern of behaviour during the course of your relationship with the Victim that consisted of controlling behaviour, in particular attempting to regulate or monitor your Victim's activities and to isolate her from friends and support. In addition, you threatened and physically abused her.
5. You would not allow her to see friends unless you were there so she began to adjust her lifestyle - seeing her friends when you were at work. She felt she could not do anything on her own. When her phone was unattended, you would look at her messages and became angry if she messaged another male. You were, in her words "obsessed with her messages"
6. She sought therapy to cope with your behaviour. You disliked her seeking help. You told her that seeing a therapist made you anxious as you knew you would get into trouble if she told her therapist about your behaviour. When the Victim told some friends that she was going to therapy, you mocked her and said she was seeking attention.
7. On 11 November 2023, when you had again been drinking, you returned home at 4:30 in the morning and you were asked to sleep on the sofa. You were unpleasant to your Victim. You tried to pick her up and roll her on to the other side of the bed. When she moved to the sofa, you continued to try and pick her up hurting her wrist. When she asked you to leave her alone, you said "If you don't let me in the bed, I will hurt you".
8. On 7 December, you told your Victim that if she did not agree to have sex with you then you would cheat on her. You blackmailed her into sexual intercourse and made other unpleasant remarks at the time.
9. You made her feel used, worthless and in consequence she has suffered psychologically as we have read in her victim personal statements. You belittled and isolated her, telling her "Nobody likes you, you have got no friends, no wonder you got bullied".
10. You made negative comments about her appearance and her weight and, in the view of the Court, this was shocking and unacceptable behaviour. We endorse your own counsel's observation that this was nasty and spiteful conduct. " 15. We pause there to say that although the Crown submitted the present case was a worse example of the offence than MacBrayne , and conscious that we are not going to engage in a fact by fact comparison between the two, we would respectfully disagree. Here there was no physical violence nor emotional blackmail of the kind described in MacBrayne (which could well have given rise to a more serious charge, apparently going as it did to the validity of the complainant's consent to sex), and we consider that when looking at the sentence imposed in that case, it is also right to reflect that while the sentence would have been one of 9 months imprisonment on each count, they would clearly have been ordered to run consecutively, and the Court must therefore have been affected by the totality principle in respect of the breakdown of sentences as between the two charges. An important difference between the two cases is that in MacBrayne , the defendant admitted his guilt and was prepared to address his difficulties in relationships. 16. In moving for a custodial sentence in the present case the Crown relied on two passages from the learned Deputy Bailiff's sentencing judgment in that

case. The first was where he said at paragraph 14 : "Domestic abuse is a serious offence. Generally the Courts will impose a custodial sentence on an offender who has abused their partner in the very place that they are entitled to feel safest, namely their home." 17. The second passage was at paragraph 16 where he said that " Custody will be the starting point in every case of domestic abuse which comes before the Royal Court ." 18. In our judgment, these remarks in that case must be taken in their context. At paragraph 13, the learned Deputy Bailiff had said that " These offences are so serious that plainly custody is warranted and the only question for the Court today is whether or not you can be spared an immediate custodial sentence. " It is to be noted that, as in *Veloso* , the Court in *MacBrayne* imposed on the two counts of assault and domestic abuse a sentence of a probation order coupled with a period of community service equivalent to 18 months imprisonment. 19. We respectfully agree with the learned Deputy Bailiff if we understand him correctly, namely that the starting point for a sentence on a charge of domestic abuse must be custody because unless the court is considering a custodial sentence, the option of Community Service is unavailable - see Article 2(3) of the Criminal Justice (Jersey) Law which provides: "A community service order may be made only where the court is considering passing a sentence of imprisonment or youth detention. " 20. The offence of domestic abuse is serious as has been said and on the particular facts, in some cases, an immediate custodial sentence will be the only appropriate option particularly where the domestic abuse charge is based on a criminal offence which would normally have given rise to custody or where the emotional or psychological damage caused by the offending requires a punitive as opposed to a corrective disposal. However, without limiting the non-custodial option in any way, but recognising that the court will often be dealing with relatively young and emotionally immature offenders, the constructive sentence in our judgment may well be a Probation Order with a requirement that the defendant attend particular courses aimed at educating them, coupled with a period of community service as a punishment in the community for their misconduct. As a probation order is not imposed with a prison sentence, the only way of achieving the constructive result is, as the Deputy Bailiff implied, consideration of the possibility of an immediate custodial sentence. In this way, in our view, the intentions of the legislature, justice for the complainant and a positive outcome for the offender and any children they may have are best likely to be secured. 21. The last case of domestic abuse to which we were referred was *AG v Hepburn*

[2024] JRC 059 . The facts were described by Binnington, Commissioner in this way: "Over a four-week period, in the autumn of 2023, the Defendant subjected the Victim to persistent, abusive and controlling behaviour leaving her scared in her own home. The Defendant's obsession with the prospect of the Victim seeing another man resulted in him turning up at the Victim's home unannounced, shouting at her from outside her home and entering the address whilst she was not there to rifle through her possessions. He took her work phone, read her diary and accessed her work laptop without her permission. " 22. The defendant there also admitted his guilt and agreed to address his difficulties. He was given a short period of community service and placed on probation. 23. As an illustration of why

the Crown is in our view incorrect to assert that MacBrayne is a basis on which the Court should be imposing an immediate custodial sentence, one only has to look at the fact that in the three cases in this Court so far under this Law, the Court has considered a non-custodial option to be the appropriate sentence. Disposal in this case 24. The Court considers that the custody threshold is passed in the present case, and that the length of the term which could be imposed is such that, bearing in mind the maximum number of hours of community service that can be ordered, the alternative of a community service order could have been justified. There are however particular features of this case which, taken as a whole, result in a different conclusion. 25. As we have indicated, the most constructive sentence would be in many cases a combination of community service and probation. In this case, it is unavailable because the Defendant refuses to cooperate with the Probation Service by attending such courses as they determine - for example The Building Healthy Relationships programme and the Engage programme. He continues not to acknowledge his guilt in respect of the offence of which he has been convicted and though he is said by his counsel to accept the verdict of the Court, he does not consider he has done anything wrong. As he will not cooperate with Probation, there is no point in placing him on probation because that would be setting him up to fail. 26. The Defendant has been assessed as a medium risk of further offending in this category of offence, namely domestic abuse within a relationship. This makes the need for his education all the more pressing, in his own interests and in the interests of any future partner. His refusal to cooperate has led us to reconsider whether a non-custodial order limited to community service, for which he has been positively assessed, is appropriate. 27. We think it is not. The Defendant has engaged in abusive behaviour over a period of 8 months which has caused harm to the Complainant and their child - in one of the exchanges which we heard on a telephone recording made by the Complainant where the Defendant insulted and abused her at length took place in circumstances where one could hear the child crying in the background. This is an aggravating factor which Article 4 of the Law requires us to take into account. He has in our judgment shown no remorse. We do not accept that merely saying in evidence, as he did, that he was sorry he had sent the abusive messages, goes far enough in justifying a conclusion of remorse. He did not plead guilty, so any remorse certainly did not result in relieving the Complainant of the need to come to Court and give evidence, subjecting herself to hostile cross examination. He did not express any remorse to the Probation Officer who prepared the social enquiry report. He does not feel he needs any help to address his difficulties. He simply does not see the impact of what he has done. 28. We accept the evidence of the Complainant that the Defendant had in effect a public and private face - the reasonable appearance which he presented to the public and the reality of his abusive behaviour in private. 29. In his defence at trial, and in mitigation before us, the Defendant has averred that the reason for his messages and the breakdown of his relationship with the Complainant was her taking of illegal drugs, which he considered would be harmful in the care of their child. We are not satisfied that there was any adequate evidence of her alleged drug use; and even if there had been, we consider the reason for his threats was his wish to control her and not

to encourage her to stop taking the drugs in question. 30. The Defendant has no previous convictions, and we have taken that into account. He met the conditions of bail once he had been able to secure a permanent address. He has spent approximately 3 months in custody on remand, which, as we understand it, will be taken into account when the prison authorities calculate his release date. We have considered carefully what we consider would be the right custodial sentence to impose, having regard to the maximum sentence under the Law. In our judgment, a sentence of 15 months imprisonment properly fits the offending with which we are dealing and that is the sentence imposed. The Defendant is urged to reflect on the remarks in this judgment while he serves that sentence. We believe that the courses which might benefit him might be available to him in prison, and indeed on his release if he wishes to undertake them voluntarily. It would in our view be very much to his and indeed his son's advantage if he did. 31. We have also imposed a Domestic Abuse Protection Order for a period of 5 years from the sentencing date; and also ordered that the Defendant be subject to the notification requirements during that period. Neither order was opposed, and we considered it right that they should be made. The absence of any remorse or acceptance that he was wrong are sufficient reasons in themselves for these orders in that that absence emphasises the risk to the Complainant which is identified in the Pre-sentence Report. The Defendant is reminded that any breach of these orders would itself be a criminal offence and render him liable on conviction to a further term in custody. Authorities Domestic Abuse (Jersey) Law 2022. AG v Veloso

[2024] JRC 094 . Criminal Justice (Jersey) Law 2001. AG v Hepburn

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