

JERSEY / JUDGMENT

AG v Ferguson [2024] JRC 218 (18 October 2024)

[2024] JRC 218

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JUDGMENT

THE DEPUTY BAILIFF: 1. Gavin Ferguson, you are 52 years old. You have appeared before the courts, principally the English courts, on a regular basis over the last 35 years. Those appearances have included many convictions for offences involving dishonesty. We note your sentence of 12 months' imprisonment for burglary of a dwelling at Lewes Crown Court in January 1994, your conviction for another offence of burglary of a dwelling in Eastbourne in February 1997, your conviction for robbery at Lewes Crown Court in May 1999 when you were sentenced to 4½ years' imprisonment, your appearance before this Court in June 2009 when you were sentenced to 6 years' imprisonment for the importation of drugs, and your imprisonment for an offence of receiving stolen goods imposed by the Jersey Magistrate's Court in December 2015. 2. You are an habitual criminal. You fall to be sentenced for three offences. On 9 September last year, you and another person gained entry to the Gloster Vaults pub on Seaton Place by damaging the lock on the side entrance door. Once inside, the fruit machine was damaged and money was stolen. The pool table and jukebox were damaged in an attempt to steal money, entry was gained to the flat above the pub, domestic premises, by forcing the key code lock. 3. This was a joint enterprise and it matters not that you and the other man played different roles in the commission of these offences. You were both jointly responsible for this criminal conduct. 4. The offence was committed at 2am and resulted in the partner of the publican (the tenant herself was in bed) being surprised to find somebody standing in the doorway of his living room. He was shocked. You and the other offender fled the scene. The tenant's partner was unable to provide a description of the man he saw in his home. 5. As to the damage for which you are jointly responsible, the fruit machine was smashed and damaged beyond repair. A small table had been picked up and used to break the machine. That machine was worth approximately £750 and contained approximately £350. The pool table and jukebox were also extensively damaged in an attempt to retrieve money from them - but neither contained cash. 6. A crime scene investigator identified that you and your accomplice had gained entry to the premises by forcing a side door into the pub from Seaton Place by using a tool. Entry to the flat had been gained by forcing open a key code lock. What was also identified from the scene was a bail form - your bail form - found on the floor under a table which indicated, in relation to other matters which we were not proceeding with, that you were due to appear at the police station in connection with those

proceedings and the bail sheet in question had been signed by you in early August 2023. 7. In consequence of the finding of that document you were arrested on 10 September. Cash was found on you, including £55 in £1 coins. In interview, you either made no comment or denied being involved in these offences. 8. Your DNA was then retrieved from a fork at the scene and your finger mark found on the bail papers to which we have referred and which you had left at the scene. This forensic evidence was put to you when you were re-interviewed in January 2024, but you again made no comment or denied being connected with these offence. When you appeared before the Magistrate in April 2024 you pleaded not guilty to all three charges. 9. You breached your bail in May 2024 and were then remanded in custody. You pleaded guilty to the offences in this Court in June 2024 and you will receive credit for those pleas. Indeed your principal piece of mitigation is your pleas of guilty to these offences. 10. The first basis of plea was rejected by the Crown and you later provided a slightly more realistic basis of plea in July which formed the basis upon the facts upon which you will be sentenced. That basis of plea says that you knowingly agreed with another to break into the pub. You say that you believed that the pub was unoccupied. In a sense that was obvious as it was 2am when you broke in. But anyone who breaks into a building a night runs the risk that any connected domestic quarters might be occupied. You accept that your bail form and the cutlery which contained your DNA were normally contained in your rucksack. Your counsel today has said that you gave your rucksack to your accomplice for the purpose of carrying away the cash. You accept that you foresaw that your offending could extend to your accomplice entering the flat above the premises which he did. You say that your main role was as a lookout. Nonetheless, as we have said, this was a joint enterprise and you are jointly responsible for what occurred, which you have accepted by your pleas of guilty. 11. The Pre-Sentence Report describes you as a prolific offender who is addicted to alcohol. You are at high risk of re-conviction on release. 12. We have read and had regard to your letters of remorse, and as you say, at your age you should have known better than to involve yourself in this sort of serious criminal offending. 13. For many years the Court has proceeded following the decision in *AG v Da Silva*

[1997] JRC 218 on the footing that the breaking and entering of an occupied dwelling house at night even if mitigated by a plea of guilty should not normally attract a sentence of no less than 3 years imprisonment and if not so mitigated, the bracket begins at 4 years' imprisonment. 14. We have revisited the decision in *Da Silva* this morning and the authority of *R v Edwards and Brandy* (9 th May, 1996) Unreported Judgment of Court of Appeal of England, to which it referred and we note from the penultimate paragraph of the judgment in *Da Silva*: "In our judgment however the centre of the brackets identified in *R v Edwards & Brandy* does provide useful guidance, in the context of the sort of case with which this Court often has to deal, as to the appropriate sentence. We emphasise that there are many aggravating factors which might lead the Court to impose a higher sentence. Such factors include, amongst others, previous convictions for this type of offence, attendant violence or threat of violence, the fact that the break-in was committed at night, evidence of planning, and accompanying vandalism. On the other hand mitigating circumstances may counterbalance any aggravating features and may even on occasion

lead to the imposition of a non-custodial sentence. Nevertheless the distress almost invariable suffered by a householder as a result of the breaking an entering of a dwelling-house is a feature which ought to be reflected in the sentence imposed." 15. In Da Silva the Defendant pleaded guilty and he was fully cooperative with the police when he was arrested, he was 22 years old and had no previous convictions apart from one minor matter and he received a sentence of 3 years' imprisonment. We also note the case of Da Silva was recently followed in the case of AG v Oeillet and Livesey

[2024] JRC 046 where the Court observed that in the case of Mr Oeillet, who pleaded not guilty, that there were aggravating features including his drunkenness, that the householder was confronted by one of the Defendant's and that he had extensive previous convictions. After a trial he was sentenced to 4 years' imprisonment. 16. Looking at the damage that you and your co-accused were responsible for we observe that it is difficult enough to run a small business, such as a pub, without people like you gratuitously involving yourself in offending resulting in extensive damage which we have seen evidenced in the photographs. There are a number of aggravating features in this case; a householder was disturbed, you were very drunk, the offence occurred at night, there was an element of planning and in the circumstances we fix the starting point as being 4½ years' imprisonment. 17. The Court will always treat offences of breaking and entering into domestic premises as grave offences warranting substantial custodial sentences, absent exceptional circumstances - none of which exist in this case. 18. The starting point in this case is mitigated by your guilty plea for which you will receive significant albeit not full credit, your remorse, your conduct in custody and all the other mitigation that is before us today. Even taking those matters into account in the view of the Jurats the sentences moved for by the Crown are slightly on the generous side, nonetheless we adopt them and the sentences of the Court are Count 1, 18 months' imprisonment; Count 2, 3 years' imprisonment, Count 3, 12 months' imprisonment, all to run concurrent making a total of 3 years' imprisonment. 19. We make a compensation order in favour of the tenant in the sum of £150.20 which represents the sum seized from you on arrest. Authorities AG v Da Silva

[1997] JRC 218 . R v Edwards and Brandy (9th May,

1996) Unreported Judgment of Court of Appeal of England. AG v Oeillet and Livesey

[2024] JRC 046 . Vladimirov v AG

[2024] JCA 161 AG v Goncalves

[2022] JRC 097 AG v Moreira

[2003] JRC 083A AG v Da Silva

[1997] JLR Notes 14A AG v Gaffney

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