

JERSEY / JUDGMENT

AG v Freitas [2020] JRC 053A (27 March 2020)

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JUDGMENT

THE Lieutenant BAILIFF: 1. This prolonged and violent altercation on the streets of St Helier in broad daylight must have been very frightening for those who witnessed it. During this altercation the defendant, who was acting very aggressively, brandished a knife with a 12cm blade. One of the witnesses later told the police, "I did feel scared - you don't expect that sort of thing to happen in Jersey". We agree; one does not expect to see that sort of thing happening in Jersey. 2. The Court has said time after time that knife crime will not be tolerated, and those who commit offences involving knives can expect to be dealt with severely. 3. Whilst we accept that the injury suffered by the victim was minor, and had probably been inflicted unintentionally, though recklessly as the defendant admits, nonetheless, borrowing the words of the judgment in AG v Hare

[2008] JRC 168 : "...the mere carrying of a knife is a serious matter, because even if it is concealed or carried for bravado or in the belief that its use in possible self-defence might arise, it takes only a moment of irritation or drunkenness, anger, a perceived insult or something utterly trivial, for the knife to be produced with the result that offences of great seriousness may be committed." 4. An aggravating feature of the offending is the defendant's threat to kill one of the participants in the altercation. 5. On being confronted by police officers the defendant threw the knife on to the roof of a nearby house. A witness to this act told the police, "The male who threw the knife didn't know where it was going to land; it could have hurt anyone". We regard this as a further aggravating feature. 6. As regards the grave and criminal assault charge we apply the well-known principles enunciated by the Court of Appeal in Harrison v AG

[2004] JLR 111 . 7. The nature of deliberation; the defendant deliberately armed himself before going out on the streets, and as the Crown has pointed out, the parties had opportunities to leave the scene, but did not. 8. Whether the blow was aimed or random; the blow causing the injury to the arm appears to have been reckless, but again we must point out that the defendant had armed himself before he left his home that afternoon. 9. Did the incident arise from a loss of temper or was it committed in cold blood? The Crown has rightly stated that tempers were running high at the time, but the meeting was quite

avoidable, as was the altercation. 10. The blow was not inflicted with any significant force; the injury was minor and mercifully will cause no permanent damage. The weapon involved, as we have said, was a knife and it was carried to the scene. Four persons were involved in the altercation, and as regards provocation the parties all appear to have been goading one another. The defendant stated in interview that this was a drug-related dispute, and there was some dispute over the defendant's partner. 11. The defendant has a criminal record, and was acting in breach of a binding over order for public order offences committed less than two months prior to this offending. The Court regards that as an aggravating feature as well. 12. The Crown has drawn our attention to several cases, accepting that they are not landmark judgments but for guidance, and we are grateful for that. But we also accept Advocate Haines's submission that each case is decided on its own facts and merits. What is crystal-clear, though, is that knife crime almost invariably attracts a custodial sentence. Advocate Haines points out that the defendant was not 'in drink' and that distinguishes his case from those of certain of the cases to which our attention has been drawn. But we read at paragraph 24 of the Social Enquiry Report that the defendant was probably under the influence of drugs at the time of the offending. 13. In a very clear address to us Advocate Haines has made several points in mitigation. He submits, and we accept, that the defendant pleaded guilty at an early opportunity and he is entitled to full credit for that. The defendant made substantial admissions in interview. He appears to have been very honest with the Probation Officer for the purposes of providing the Social Enquiry Report to us and he has produced a large number of substantial and impressive references supporting him. Advocate Haines told us that the defendant was aged 22 at the time of the offending and is still a young man, so has some credit for youth. 14. There is one matter to which counsel for the defendant did not draw our attention, but it is set out in the Social Enquiry Report. We do not propose to rehearse the details: suffice it to say that the defendant endured a quite appalling personal history in his younger years, and we give him due credit for that in mitigation. 15. Stand up, please, Mr Freitas. There can be no community disposal in this case. Advocate Haines has said everything he could for you, but the offending is so serious that it attracts an immediate custodial sentence. The policy of this court is pellucid. Having regard to the mitigation, however, the Court is of the view that the conclusions of the Crown are slightly too high. 16. On Count 1 there will be sentence of 18 months' and on Count 2 the sentence is one of 12 months' imprisonment. Those will be served concurrently, making a sentence of 18 months' imprisonment in all. 17. We order the forfeiture and destruction of the knife. 18. As regards deportation, the Court is not in doubt that the first part of the test in *Comacho-v-AG*

[2007] JLR 462 is satisfied. It is the second part of the test that has exercised the Court. Your conduct since you have been in Jersey, and particularly this recent offending, is very serious indeed and it has got to stop. We hope that Advocate Haines is right when he says that this case has been a wake-up call for you, Mr Freitas. I cannot emphasise how finely balanced this has been. You must really listen carefully. We are just persuaded that your

family relationships here are sufficiently strong and close that we should not deport you. You have, it seems for the first time, some stability in your life, and we think that to recommend your deportation would interfere with that stability. In particular the Court does not wish to split up a father and son. Now you have got some responsibilities and you must really comply with them and stay with your family as soon as you can have your freedom. Look after them. 19. I am going to issue this warning, Mr Freitas. If you reoffend, after your release from prison, we cannot possibly say what the sentence of the sentencing court will be, we do not know; but if you reoffend, please be absolutely in no doubt that it is highly likely that the Court would on that occasion recommend your deportation. Do you understand that? 20. The sentence will be 18 months' imprisonment, forfeiture and destruction of the knife and no deportation order. *Authorities AG v Hare*

[2008] JRC 168 *Harrison v AG*

[2004] JLR 111 *Comacho-v-AG*

[2007] JLR 462 *AG v Vaz*

[2019] JRC 090 *AG v Hamon*

[2017] JRC 138 *AG v Harris*

[2015] JRC 057 *AG v Lawlor*

[2009] JRC 150 *AG v Vale*

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