

JERSEY / JUDGMENT

AG -v- Gomes [2013] JRC 020 (25 January 2013)

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JUDGMENT

THE DEPUTY BAILIFF: 1. The Defendant was charged on an indictment containing three counts - on 15 th September 2012 having committed an indecent assault on a woman in premises in Duhamel Lane, St Helier; two days later having an offensive weapon in a public place, namely a knife and a third count of grave and criminal assault on the same occasion. A plea of not guilty to the grave and criminal assault was entered and accepted by the Crown. On 11 th January, the Defendant was sentenced to 12 months' imprisonment on each of counts one and two, such periods of imprisonment to run consecutively, and the Court indicated that detailed reasons for its decision would be given later. These are those reasons. 2. At approximately 10.00 p.m. on 15 th September 2012, the Defendant attended the residence of a woman who lived in a small room behind a residential garage just off Duhamel Lane. He knew the lady in question, having formerly been her neighbour when she was co-habiting with a Mr Jose Costa. But that relationship and co-habitation had ended in June 2012 when she moved to the premises in Duhamel Lane. 3. The room in which the victim lived was very small measuring approximately 6ft square. It was just big enough for a single bed, an oven, a fridge and a small wardrobe. It was sufficiently small that the door into the room could not be opened fully. Inside the adjacent garage there was a small room with a toilet containing a shower head. The door to the toilet was not lockable from the inside. Access to the victim's room is through the garage which opens onto the street. There is nothing to prevent passers-by from entering the garage. 4. There was no dispute that at 10.00 p.m. on 15 th September, the victim answered a knock at her door. She thought it would be her daughter visiting her but it was the Defendant, who forced his way past her. He told her that his own partner had left him and that he wanted to go to bed with her. She was scared and refused his request. The Defendant then forced himself upon her attempting to kiss her on the lips. She turned away but he kissed her on the cheek and face and then put his hand on her breasts, rubbing them. She tried to leave the room, but the Defendant restrained her by grabbing her arm, causing a bruise. However he then stopped and sat down on the bed, and in a calmer manner told her that he wanted her to go back to his room because he liked her. The victim was very scared and saw the opportunity to escape. She left her own room, with the Defendant following her, and went out into the lane. He walked off in one direction and she returned to her room locking the door behind her. We are told that she was too frightened to leave her room that

night, even to shower, and that she cried herself to sleep. 5. The following day she told her former partner Mr Costa that the Defendant had been to her room, and, although she did not give details of the assault, she asked Mr Costa to keep an eye out for the Defendant. 6. Two days later on Monday 17th September, the victim was returning to her room and at about 9.30 p.m. she bumped into her former partner Mr Costa. She asked him to accompany her home and to wait outside while she had a shower. This was because the door to the toilet/shower was not capable of being locked, and she was afraid that the Defendant might return. Mr Costa agreed to do so. The victim showered and they subsequently talked in the garage area outside the bathroom. 7. Mr Costa then noticed the Defendant approaching from further down the lane and both Mr Costa and the victim went into her room. When the Defendant knocked at the door, Mr Costa answered. He noted that the Defendant was carrying a knife as the Defendant gestured towards the handle protruding from his waistband. Fearful that the Defendant might draw the knife, Mr Costa grabbed him by the shoulders and brought him to the floor, restraining him there. A neighbour called the police and on their arrival they arrested the Defendant. They retrieved from his waistband a kitchen knife with a seven inch blade. The Court was shown the knife at the sentencing hearing. It is undoubtedly capable of being used as a very serious weapon. 8. On interview the Defendant gave contradictory and inconsistent explanations for what he had done. He denied committing any assault on the victim, and he said that Mr Costa had attacked him for no apparent reason. Later on he admitted he had been drinking and it was possible that he could have touched the victim's breasts, but he could not recall it. Eventually he accepted that the victim's allegations were true. 9. On entering a plea of guilty to the charge of indecent assault, the Defendant became subject to the notification requirements under Article 3 of the Sex Offenders (Jersey) Law 2010 . The Court has noted from the social enquiry report that the Defendant has been assessed under the Risk Matrix 2000 actuarial risk assessment tool, and is regarded thereunder as being at moderate risk of sexual recidivism. He has also been assessed under the Stable and Acute 2007 risk assessment tool. On this assessment too he is regarded as falling in the moderate bracket of risk of sexual recidivism. 10. The minimum period during which an offender may not ask the Court to disapply the notification requirements to him is five years, subject to exceptional reasons existing, as prescribed by Article 5(4) of that Law. The Court is more than satisfied that there are no exceptional reasons which apply and is also satisfied that the minimum period before an application is made is appropriate in this case. Accordingly the Defendant is prohibited from making any application to have the notification requirements disapplied to him for a period of five years running from the date of his conviction. 11. The Crown has accepted that the assault on the victim falls at the lower end of the spectrum insofar as the charge of indecent assault is concerned. The Court certainly accepts that insofar as the physical assault was concerned. Rubbing the breasts of an adult female over the clothing does fall at the lower end of the spectrum of indecent assault. However, the victim in this case was confronted by a mature man of 50 who had forced his way into her room where she was alone, which by nature of its size was a confined space. He had been drinking and demanded sexual favours from her. The Court is in no doubt that she must have been very frightened indeed. Accommodation where she should have felt and been safe was violated, and indeed she has subsequently had to move from it. We take into account the guilty plea, which has a real value because the victim has not had to come

to Court to give evidence and confront her attacker, and we take into account that he is of relatively good character, although he does have one previous conviction for a grave and criminal assault in March 2004. Nonetheless, we consider that the Crown's conclusions of 12 months' imprisonment are correct. As was said in the case of AG-v-Mendes

[2010] JRC 237 , the Court accepts the need to impose a custodial sentence which is appropriate not only as punishment for what has been done, reflecting the real fear which the victim must have experienced, but also as a signal to the community that the Court will not tolerate indecent assaults upon females who are alone and vulnerable. 12. We turn next to Count 2, and it was the mitigation on this count that led to the judgment being reserved. On behalf of the Defendant, Advocate Steenson asserted that his client did not intend to cause injury to anyone, but he did not have an excuse for carrying the knife in a public place, and he therefore pleaded guilty. He emphasised that the Defendant did not go to the victim's premises on the second occasion with a view to using the knife, or with a view to threatening the victim. He denied that it could be inferred by the Court that the Defendant intended to cause injury although he accepted that the knife itself was capable of being used to cause injury. 13. The Defendant was charged under Article 43 of the Firearms (Jersey) Law 2000 , the relevant parts of which are in these terms:- "(1) Any person who without lawful authority or reasonable excuse (the proof of which shall lie on the person) has with him or her in any public place any offensive weapon, shall be guilty of an offence and liable to imprisonment for a term of four years and a fine. ... (3) In this Article "offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by the person having it with him or her for such use by him or her." 14. These provisions are not dissimilar to Section 1 of the Prevention of Crime Act 1953 and it is accordingly legitimate to have regard to decisions of the English courts on that statutory provision. Before we turn to those decisions however, we draw attention to the fact that by Section 1(4) of the 1953 Act, the weapon becomes an offensive weapon if intended by the person having it with him for use by him or used by some other person . For some reason, these latter words have been omitted from Article 43(3) of the Firearms (Jersey) Law 2000 , and we would suggest that the Attorney General brings to the attention of the Home Affairs Minister for urgent consideration the possibility of an amendment to put the Jersey provision on all fours with the statutory equivalent in the United Kingdom. There is no obvious reason why a person should be in theory able to escape liability under Article 43 of the 2000 Law by establishing that he was carrying the offensive weapon with the intention that his friend would use it rather than that he himself would do so. 15. We do not think that Advocate Steenson's submission that the Defendant did not intend to cause injury to anyone is consistent with the guilty plea which has been entered to the offence which has been charged. That offence is to have in a public place an offensive weapon without lawful authority or reasonable excuse. The term "offensive weapon" means one of three things - 1) an article made for use to cause injury to another, 2) an article adapted for use for causing injury to another, 3) an article intended by the person charged with the offence to be used by him for causing injury to another. 16. As with all

criminal offences except where there is statutory provision to the contrary, the burden lies on the Crown, and in relation to the offence under Article 43(1), where the article which is alleged to be the offensive weapon is not made or adapted for use for causing injury to the person, the Crown must prove that the Defendant in question intended to use the article for that purpose, namely for causing injury. If the prosecution cannot prove that intent, then the Defendant in question is entitled to be acquitted of the charge. It may be, of course, that the absence of any lawful authority or reasonable excuse will in practice enable a court or jury to infer the relevant intent on the part of the Defendant.

Nonetheless, a plea of guilty to a charge under Article 43(1) is in our judgment an acceptance that the article was being carried with the intention that it should be used to cause injury to the person. It is not necessary to prove that any particular person was the subject of the Defendant's intent. All that is necessary is that the Crown must prove that the Defendant carried the article with the intention of using it to cause injury to the person. 17. It is important therefore to distinguish the carrying of a knife without lawful authority or reasonable excuse where the Defendant has that intention from a case where the Defendant actually uses the knife, because the facts may justify a conviction in the one case but not in the other. It may be, for example, that the knife is carried defensively where a defence of self-defence might even in extreme circumstances be accepted by a court. Similarly as found in the case of *R -v Jura*

[1954] 1 QB 503, in the Court of Criminal Appeal, the fact that an article is used offensively is not conclusive of the question as to whether or not the accused had the article in his possession as an offensive weapon within the meaning of Section 1(1) of the 1953 Act. In *Ohlson -v- Hylton* [1975] 1 WLR 724, the Divisional Court held that having an article innocently will be converted into having the article guiltily if an intent to use the article offensively is formed before the actual occasion to use violence has arisen. 18. In *R -v Simpson* [78 Cr. App. R. 115] in the English Court of Appeal, Lord Lane C. J., identified three categories of offensive weapon - those made for use for causing injury to the person, those adapted for such a purpose and those not so made or adapted, but carried with the intention of causing injury to the person. That seems to us to be precisely the position in relation to the definition of "offensive weapon" in Article 43(3). 19. In this case, the knife is clearly not an article made or adapted for use for causing injury to the person. As a guilty plea has been entered, the Defendant must be taken to have accepted that he had the knife with him with the intention of using it for causing injury to the person. In the course of argument, we resolved to adjourn briefly in order that Advocate Steenson could consider the Court's comments in relation to this matter with his client. On our return we expressly asked whether the Defendant wished to apply to change his plea. Advocate Steenson indicated that he did not wish to do so. We accordingly proceeded upon the basis that we rejected Advocate Steenson's submission that the Defendant is to be treated as not having intended to cause injury to anyone with the knife which he was carrying as a submission incompatible with the plea. 20. What we are left with therefore is a Defendant who has admitted an indecent assault on a single woman on her own in her home and, whom he

has tried to persuade to go back with him to his room; and who is then found two days later in a public place just outside her home carrying a knife with the intention, implicit in his plea, of using the knife to cause injury to someone. He furthermore went to the victim's room again and knocked at the door, and when asked what he was doing there, gestured towards the handle of the knife protruding from his waistband. It is impossible to treat such conduct other than very seriously indeed. We think the Crown's conclusions were too low, and, at least arguably, were far too low. The maximum sentence which this offence carries was increased from two years to four years in 2009. That reflects the concern which the legislature must be taken to have had about the increasing prevalence of the use of offensive weapons. The Court's experience too is that the use or threatened use of a knife in a public place is increasingly prevalent. As the Court said in AG -v- Hare

[2008] JRC 168 :- "... indeed, 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, perceived insult or something utterly trivial, for the knife to be produced with the result that offences of great seriousness may be committed." 21. It is unclear what intent the Defendant had in carrying the knife with him other than he must have had the intent, for the reasons given above, of using it to cause injury to someone. There is nothing on the papers which suggest that he might have been carrying the knife for the purposes of self-defence. His offence is aggravated by his admitted drunkenness. We consider that there are grounds upon which one could quite properly impose a sentence well in excess of 12 months' imprisonment on this count alone, having regard to all the circumstances of the case. 22. This charge of having an offensive weapon in a public place without lawful authority or reasonable excuse relates to an incident two days after the indecent assault. Although connected geographically, we think it is clearly an offence which calls for a consecutive sentence. Whereas we might have been inclined to look at increasing the Crown's conclusions on the second count more significantly, had that count stood alone, on totality grounds we consider that a total of two years' imprisonment is sufficient. 23. For these reasons, we impose a sentence of 12 months' imprisonment on each count consecutive, and in doing so we have taken into account such mitigation as there is, as mentioned above. Authorities Sex Offenders (Jersey) Law 2010. AG-v-Mendes

[2010] JRC 237 . Firearms (Jersey) Law 2000. Prevention of Crime Act 1953 . R -v Jura [1954] 1 QB 503. Ohlson -v- Hylton [1975] 1 WLR 724. R -v- Simpson 78 Cr. App. R. 115. AG -v- Hare

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