

JERSEY / JUDGMENT

AG -v- Harrison [2015]

JRC 202 (02 October 2015)

[2015] JRC 202

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JUDGMENT

THE commissioner: 1. The defendant, who is 49, was found guilty of grave and criminal assault by the unanimous verdict of the Jury following a three-day trial. The assault took place at about 5:45pm outside the Dolphin Hotel from which he and the victim had emerged. Witness, both in and out of the pub, described the defendant punching the victim between two and six times to the face, knocking him apparently unconscious. He fell to the ground hitting the back of his head on the pavement where, according to a witness, he lay unconscious for what seemed as a few minutes. At the Accident and Emergency Department at the hospital he was found to have lacerations to the back of his head and forehead, a swollen and bruised nose and facial swelling and tenderness. The victim says in his statement that he declined an operation resetting his nose as the outcome could not be guaranteed but his nose is no longer straight. 2. The defendant's defence was that he was acting in self-defence, an explanation rejected by the Jury, but it is clear that there had been verbal exchanges within the Dolphin. The defendant has previous convictions for motoring and public disorder offences, though we accept that they are at a lower level. He is assessed by the Probation Department as being at a low risk of reoffending. 3. The Crown submits that the Court has a clear and well-established policy that street violence will not be tolerated and that unprovoked attacks in a public place will be punished by a custodial sentence. In its view, having taken into account the Harrison-v-AG

[2004] JLR 111 factors, there is little mitigation available to the defendant and it moves for a sentence of 2 years and 6 months' imprisonment. In addition the Crown move for an Exclusion Order to take effect after the defendant's release, compensation for the victim in the sum of £2,625, and costs of £30,000, the defendant apparently owning a property and a successful business. 4. We have considered the Harrison factors ourselves and our own assessment is that this case is at the lower end of the scale. In our view this was not an entirely unprovoked attack; there clearly was a build-up to which the defendant eventually overacted. Furthermore there was none of the violence seen we have seen in other cases such as kicks or punches when the victim was on the ground. The defendant was cooperative with the police; he cannot be criticised for exercising his right on advice not to answer some of the questions put to him. 5. Because of the clear policy of the Court however we can see no option other than to impose a sentence of imprisonment. What

the Jury found was a grave and criminal assault, committed in public. We set the starting point at 2 years from which we will make a reduction to take into account the defendant's personal mitigation as put forward by Advocate Steenson. 6. On Count 2 you are sentenced to 18 months' imprisonment. 7. There will be no Exclusion Order. 8. We order the defendant to pay compensation to the victim of £2,625 to be paid within 1 month with a consecutive default sentence of 3 months' imprisonment. 9. In terms of costs the Crown have referred us to the extract from Whelan on Aspects of Sentencing in the Superior Courts of Jersey and the decision of the Court of Appeal in X-v-AG

[2011] JLR 166 . We do not regard the defendant as having conducted his defence in a blameworthy way but the case against him was strong. There were at least three wholly unconnected witnesses who gave evidence of his assaulting the victim before the victim had a chance to defend himself. 10. In all the circumstances we think he should be ordered to pay costs but, as Advocate Steenson points out, they have not been assessed. On a summary basis we are only prepared to order costs in the sum of £15,000 to be paid within 12 months from today's date. Authorities Harrison-v-AG

[2004] JLR 111 . Whelan on Aspects of Sentencing in the Superior Courts of Jersey Third edition. X-v-AG

[2011] JLR 166 . Licensed Premises (Exclusion of Certain Persons) (Jersey) Law 1998. Criminal Justice (Compensation Orders) (Jersey) 1994. UK Magistrate's Court Sentencing Guidelines - Definitive Guide. Costs in Criminal Cases (Jersey) Law 1961. AG v Smitton 1993/101. AG v Warburton 1993/115. AG v O'Brien 1995/226. AG v Knowles 1998/134. AG v De Freitas 2001/86B. AG v Belhomme

[2014] JRC 230 . AG v Le Chevere

[2015] JRC 053 . AG v Carver

[2015] JRC 112 . AG v Silva

[2015] JRC 153 . Judicial College Guidelines (11th Edition) 2012. Page Last Updated: 27 Sep 2016
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