

JERSEY / JUDGMENT

AG v Holden [2002] JRC 170 (13 September 2002)

[2002] JRC 170

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JUDGMENT

THE DEPUTY BAILIFF: 1. We accept that there had been an element of verbal provocation by the victim, Mr Readman, inside and subsequently outside, the "Folies d'Amour" on the evening of these events. However, when Mr Readman and the defendant met again just inside the entrance to the Hotel Angleterre there was jostling the result of which was the victim fell down the steps. He may have been pushed; he may not. 2. The victim got up and started to walk away but the defendant did not leave matters there. Despite the attempt of one of his friends to restrain him by putting his arm out and telling the defendant to leave it there, the defendant went after the victim who turned to face him. It is clear from the eye witness evidence that the victim offered no aggression of any sort. After a short exchange of words the defendant delivered a punch to the victim's face. It was clearly a blow of some force because it knocked him off his feet. He fell flat on his back on the ground and one of the witnesses heard his head hit the pavement. He clearly immediately lost consciousness. 3. Despite this the defendant turned around and left the scene by going back into the Hotel Angleterre. He made no effort to call the emergency services or to surrender to the police. He went out drinking the next night and also on the Sunday evening before being arrested on his return to the Hotel Angleterre at 11.30 p.m. on the Sunday evening. When interviewed he offered no comment and he declined to go on an identification parade. 4. Cases like this - "one punch manslaughter cases" as they are sometimes called - are particularly difficult to sentence. On the one hand the degree of violence is moderate, one punch. In most cases a punch will simply lead to bruising or other comparatively minor injury, in which event the penalty is likely to be a fine or in the case of a previous record a short prison sentence. 5. But courts cannot ignore the fact that in cases such as this a life has been lost. The matter was well summarised by the English Court of Appeal in the case of R-v-Crimp

[1995] 16 Cr. App. R (S), where Hirst LJ said this: "The public does cherish the sanctity of human life and when, as here, violence, albeit unintended, results in the death of the victim, the public sees the offence in an entirely different light from one where a non-fatal injury ensues. We, as judges, sit here as representatives of the public, and it would be quite wrong for us to disregard that thoroughly understandable attitude". That comment was endorsed by the Court of Appeal in the subsequent case of Welch (2002) EWCA Crim.294. 6. We have been referred to a number of English cases - there being no direct guidance in

the Jersey authorities. For many years the leading case has been that of R-v-Coleman

- (1992) 13 Cr. App. R.(S). In that case the Court of Appeal said that the starting point on a guilty plea should be 12 months where one punch causes death because the person subsequently comes into contact with a pavement or something similar; in other words where the punch itself does not cause death but where consequential injury, by the head coming into contact with the pavement does. That 12 month starting point is to be increased or reduced according to the aggravating and mitigating circumstances. The expression 'starting point' is, therefore, not being used in the same manner as is applied in this Court in drug cases. 7. We have been referred to a number of cases where sentences broadly consistent with the level referred to in Coleman have been imposed. Bryant
- (1993) 14 Cr. App R (S): 2 years on a not guilty plea; Henry
- (1999) 2 Cr. App. R.(S): 1½ years; Keaney
- (2001) 1 Cr. App. R (S): 3 years on a not guilty plea indicating perhaps 2 years on a guilty plea; Edwards
- (2001) 2 Cr. App. R.(S): 1½ years on a not guilty plea. Of course, the facts all varied. 8. In other cases longer sentences have been passed by the English Court of Appeal. In Matthews and Hewson
- (2002) 1 Cr. App. R.(S) 4½ years' youth detention was imposed, but we consider that to be a very different case because the single blow was administered as part of a premeditated intention to use violence if necessary to collect a debt. In Cannon
- (2001) 1 Cr. App. R.(S) a sentence of 3½ years was passed but there were previous convictions for violence and, as Advocate Gollop pointed out, there were two punches, although it is clear that Lord Lane intended the Coleman guidelines to cover such an eventuality. In Hamar
- (2001) 2 Cr. App. R.(S) a sentence of 4½ years was imposed. The Court referred to a hardening of the attitude towards violence. In that case there were previous convictions and Advocate Gollop submitted that the punch administered in that case was of a much more forceful variety than in the present case. 9. In Bosanko
- (2000) 2 Cr. App. R.(S) 4½ years' youth detention was imposed, again the defendant in that case had a previous record for violence. There had furthermore been earlier violence in the evening culminating in this punch which led to the death. Clearly in some of these cases the facts are materially different, but certainly in the case of Hamar and Cannon it could be said to be hard to reconcile these with the sentencing levels envisaged in Coleman . Indeed the English Court of Appeal has accepted that it is difficult to reconcile all the sentences passed in these various cases. 10. Mr Whelan also relied particularly on the Attorney General's Reference No. 100 of 2001, (Alfred Robert Welch)

(2002) EWCA Crim. 294. In that case the Court of Appeal said that the 12 month figure in Coleman could not be regarded as being of general application having regard to the wide variety of circumstances in which the offence is committed, the weight of subsequent decisions of this Court, and the public abhorrence of street violence. It is clear that the Court of Appeal in Welch considered that a number of subsequent cases before the Court of Appeal were simply hard to reconcile with Coleman . 11. The Court went on to say that the correct sentence in Welch , which was an Attorney General's reference, would have been 5 years on a guilty plea, despite the fact that the defendant in that case was only 22, had good character references and was of previous good character. However, the case involved three separate incidents, in which the defendant, who was in a car, called over an innocent member of the public under the pretext of asking for assistance, and then, when they bent their heads down to hear what the defendant was saying, he punched them in the face. On the third occasion on which it happened the victim died by striking his head on the pavement. We regard that wholly unprovoked and, more importantly, repeated course of violence as being more serious than this case. 12. What is clear though is that the Courts have taken a firm line on street violence, and that the Coleman guideline is now some 10 years old. Advocate Gollop relied on the recent case in this jurisdiction of A. G.-v-McManus (16 March, 2001) Jersey Unreported; [2001/61], and (23 rd May, 2001) Jersey Unreported; [2001/118]. That was not a case of manslaughter but the victim suffered horrific personal injuries. The Court did look in that case to Coleman for guidance and applied it by analogy. However, McManus is not a case of manslaughter, and the degree of violence in that case was extremely modest. Furthermore, the Court in that case was not referred to any of the subsequent cases to which we have been referred. 13. Mr Whelan also referred us to the case of A. G.-v-O'Brien (20 th November, 1995) Jersey Unreported. That was a case in which there was no real provocation, there was a very hard punch, and it led to the victim striking his head on the pavement and being put on a life support machine at one stage. Fortunately he recovered and the on-going injuries were comparatively modest. Coleman was referred to in that case and the Court imposed a sentence of 2½ years' imprisonment. We agree with Advocate Gollop that in certain respects that case was more serious in that the defendant had made determined efforts to avoid justice but, nevertheless, he was a person with no previous convictions and we find the case to be of relevance and some assistance. 14. We agree with the Court of Appeal in Welch that the figure of 12 months in Coleman is not to be regarded as being of general application or to operate in some way as a strait jacket. Each case turns on its own facts. We have had regard to the general range of sentences disclosed in the cases to which we have been referred. 15. Our task is to decide where the correct sentence for this case lies having regard to the aggravating and mitigating circumstances. There are aggravating circumstances in this case. First there was a large consumption of alcohol on the part of the defendant. He was drunk. Secondly, this was not a case of instinctive or instantaneous violence. The first part of this incident took place at the top of the steps, down which the victim fell. At that stage the defendant was still at the top of the steps. The victim got up and walked off. Friends tried to restrain the defendant, but he brushed them aside and

pursued the victim. That was not a case of instinctive or instantaneous re-action to something said or done. Thirdly the defendant showed a callous disregard for the victim's welfare. It was quite different, for example, to Coleman where the defendant was immediately very concerned and helped the emergency services at the scene. Here the defendant left the scene immediately, leaving the victim unconscious on the ground. He made no effort to help; he went upstairs and continued drinking. Fourthly, it is not a case where there was any physical aggression from the victim. The eye witness statements make it clear that he was offering no sign of aggression whatsoever at the time he was struck. 16. Conversely there are of course a number of powerful mitigating factors. The most important is the defendant's previous good character. We have read the references, and we have read his letter to us. It is clear that what happened on this evening was wholly out of character. Secondly, there is his guilty plea. He is, of course, entitled to credit for that guilty plea. However, he was not co-operative initially. When interviewed he offered no comment and refused to attend an identification parade. Advocate Gollop was quite right to say that that is not an aggravating factor because a person is entitled to say nothing. He is indeed, but then he loses the prospect of being able to say to the Court that he was immediately co-operative, and furthermore was extremely remorseful so that the truth came tumbling out of him. Thirdly, there is the question of remorse. We accept that this defendant is remorseful, as is shown by the reports particularly the psychological report, but again the remorse was not immediate. It is indicative of remorse if a person, realising what has happened, stays at the scene and seeks to do all he can there and then to put the matter right as far as can be done. Fourthly, it was not premeditated. We accept that there was no question of the defendant having decided in advance to use violence. However, as we have already said it was conversely not a case of instantaneous violence: he did go after the defendant when the first part of the incident appeared to have ended. Fifthly, Advocate Gollop said that it was not a savage blow. We accept that, but then neither was it a pathetic or weak blow. It was clearly sufficient to knock the victim off his feet and the various eye witnesses gave descriptions which clearly suggested a blow of moderate force. Sixthly, says Advocate Gollop, it was a single blow and that is of course true. Lastly, but importantly, he says that there was provocation on the part of Mr Readman and that is accepted. As we have said at the beginning there was verbal provocation. However, there had been no physical provocation apart from the jostling which took place at the top of the steps. We accept, as Advocate Gollop puts it strongly, that it must have been a shock to the defendant, having been subject to some aggressive verbal interchange on the part of Mr Readman at the club, to find Mr Readman inside his hotel when all the defendant wanted to do was to get home. We accept that that must have come as a surprise to him and he may well have been concerned as to Mr Readman's reason for being there. 17. We have the difficult task of balancing these factors always taking into account that this is a case which has lead to loss of life, and, as we have already said, that must therefore be taken into account. We are satisfied, however, that the conclusions are too high. We do not think that the conclusions are consistent with the level of sentences which we have seen generally, taking account of the particular

circumstances of this case. The sentence of the Court is one of three years' imprisonment. We would like to end simply by endorsing Crown Advocate Whelan's comments concerning the investigation. This was clearly not straightforward. In the light of the factors which Advocate Whelan described, we congratulate the police on bringing it to a speedy conclusion. Authorities Coleman (1992) 13 Cr. App. R (S). Bryant (1993) 14 Cr. App. R (S). Cannon (2001) 1 Cr. App. R (S). Hamar (2001) 2 Cr. App. R (S). Bosanko (2000) 2 Cr. App. R (S). Attorney General's Reference No. 100 of 2001, (Alfred Robert Welch) (2002) EWCA Crim. 294. Crimp [1995] 16 Cr. App. R (S). AG-v- McManus (16 th March, 2001) Jersey Unreported; 2001/61. McManus -v- AG (23 rd May, 2001) Jersey Unreported CofA; 2001/118. AG-v-O'Brien (20 th November, 1995) Jersey Unreported. Henry (1999) 2 Cr. App. R.(S). Keaney (2001) 1 Cr. App. R(S). Edwards (2001) 2 Cr. App. R.(S). Matthews and Hewson

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