

JERSEY / JUDGMENT

AG -v- Kirkpatrick [2016]

JRC 121 (15 July 2016)

[2016] JRC 121

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JUDGMENT

THE BAILIFF: 1. The defendant is here to be sentenced on two counts, one of being disorderly on licensed premises, contrary to Article 82 of Licensing (Jersey) Law 1974 ("the Licensing Law") and the other a grave and criminal assault. The circumstances in relation to the first offence relate to throwing drink over the defendant's shoulder on the dance floor of a club and thereafter pretending to throw a further drink over the victim causing him to flinch and raise his hands in anticipation. There was then some disorderly contact between victim and defendant, the victim, unsurprisingly, objecting to that course of conduct by the defendant. The grave and criminal assault occurred outside the club not very much later. It was at that point an unprovoked attack in the sense that the victim was talking to one of the friends of the defendant. It seems to be clear that the victim was still upset at what had taken place in the club and the Court is not surprised. At the same time, that incident was an incident which no doubt to the defendant seemed to be a minor one but to others it was not and unquestionably the amount of alcohol consumed was the reason that different people could take a different view of what had taken place in the club. The defendant then came up to the victim and struck him with one blow with an open hand. It was, however, a very hard blow. There seems little doubt that it caused the mastoid bone around the victim's left ear to break. It certainly was hard enough to cause the victim to fall to the ground when he hit his head and lost consciousness. As a result of the assault the victim has suffered injuries for some time; he was held in hospital for some days and now, some months later, he is still suffering from some effects of that assault. He describes how he has ringing in his ear and pain and he is anxious about long-term health implications, in particular the fracture to the skull and what he describes as the perforated eardrum. 2. The Court has said repeatedly, it was said in AG-v-Cummins

[2006] JRC 070 and has been said on many, many occasions, regrettably since then, and those cases are not all before us today but the Court is well aware of the numbers of times we have said it:- "...those who commit violence in public places in St Helier, particularly if they use weapons, (but the weapon is not necessarily going to affect that policy) will face substantial sentences. There is too much violence in Jersey, often fuelled by drink and the Court is determined to try and send a message that such matters will not be accepted." 3. The Court has frequently said that if there are exceptional circumstances then a custodial

sentence will be avoided. It is not possible to give a list of what circumstances amount to exceptional and we have had a number of cases put before us and the Court is those cases has clearly considered that there was something exceptional. We have looked at the circumstances in this case as hard as we can but we cannot see anything exceptional in them. 4. In those circumstances we think the offence crosses the custody threshold and it is inevitable that, despite the fact that it is one blow and despite the fact there was no weapon used, a custodial sentence must be imposed. 5. We now turn to look at the mitigation in question to determine how long that sentence should be. We accept that the defendant has produced some references which very much stand to his credit and we have taken them into account. We accept the defendant has shown remorse for the offence which he has committed but we take into account that he has previous convictions for grave and criminal assault, admittedly in 2009 but also a breach of the peace by fighting in 2012, indeed including the current two offences, 13 offences in all since 2008 and we think that previous record is material. Nonetheless in terms of mitigation we take into account that he attended voluntarily at Police Headquarters and we also, of course, take into account his guilty plea. 6. Mr Kirkpatrick, we think that the fact that you have recently become a father will make a difference to you. It may already have made that difference to you and your counsel has explained, as you have heard, how this sentence of custody will have an impact on your young family. That is something for you to think about. That is something for you to think about while you serve your sentence because your family will rely on you and you must consider the record that you have, the way in which you react, the reason for the Court's policy about treating grave and criminal assaults in public places fuelled by alcohol has seriously as we do, and that actually you have to apply the control before you take the alcohol because once you have taken it, it is too late; you need to think about that. On the other hand it was one blow and it was with an open fist, we accept the defendant did not intend the injury but once a person hits another and causes him to fall over onto the pavement, as the case has shown, there are sometimes very serious injuries which are sustained. 7. Taking everything into account, the Court is going to reduce the conclusions slightly and you are sentenced on Count 1, which was the breach of the Licensing law, Article 82, to 1 month's imprisonment. On the grave and criminal assault charge you are sentenced to 9 months' imprisonment and they are to run concurrently, making a total of 9 months' imprisonment. 8. In addition you will have an Exclusion Order imposed against you so you are not to attend in 1 st , 2 nd , 4 th , 5 th and 7 th category licensed premises excluding the Multiplex Cinema, Jersey Airport and the ferry terminal at Elizabeth Harbour for a period of 12 months from the day of your release from prison. The licences which are excluded from that are a restaurant licence. 9. There is no order for costs. 10. Solicitor-General, this Court has noticed that there have been at least two and maybe more cases which have come about following attendances in Tanguy's. We think that the Attorney may wish to review the circumstances with the Police Licensing Unit as to whether an Article 9 reference would be appropriate. Authorities Licensing (Jersey) Law 1974. AG-v-Cummins

[2006] JRC 070 . Harrison-v-AG

[2004] JLR 111 . AG-v-Monks

[2012] JRC 003 . AG-v- Deffains

[2004] JRC 075 . AG-v-Bisson

[2015] JRC 073 . AG-v-Cameron

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