

JERSEY / JUDGMENT

AG v Lavery [2004] JRC 159 (10 September 2004)

[2004] JRC 159

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JUDGMENT

The COMMISSIONER: 1. For whatever reason and however cogent such reasons may seem to the person involved, this Court is not impressed by revenge assaults. 2. There is little doubt that Lavery was fired by drink when he set out to Morris' flat. It may well be that he did not form the intention to assault Morris physically until there was the confrontation in the bedroom at Steephill Cottage. 3. We accept the accused's version of events as does the Crown. And so we do not accept that any person other than the accused carried out the assault. We must also recall that three days previously Morris had been involved in fights with another lodger and had received injuries. 4. There are, of course, as we have said discrepancies in the accounts of what took place. The assailant and his victim tell very different stories. We believe that Crown Advocate Binnington has taken as fair a view of the incident as possible and we accept that the injuries specified by the Crown were a result of the assaults by Lavery. In contrast, it must be noted that Lavery's injuries were slight: there was bruising and a small graze at the back of the thumb. 5. In *Harrison -v- AG* [2004]JCA046 the Court of Appeal set out ten matters which the sentencing court should take into account and we have, of course, carefully considered each of these in turn when we retired. We have to say the assault was a vicious one and the photographs of the injuries suffered by Morris bear that out, but fortunately there do not appear to be any long-term injuries. 6. There was a guilty plea entered on indictment and Lavery has co-operated with the police. 7. We have carefully studied the cases of *A. G. -v- Bennett* (19 th January 1996) Jersey Unreported; [1996/13] and *A. G. -v- Henry* (30 th July 1999) Jersey Unreported; [1999/138] but we can distinguish those cases, although as in *Henry* , we have to say that this was a cowardly assault. 8. Although Lavery has previous convictions, six of the nine were offences against the person but they were all at Magistrate Court level and he has had no serious convictions since 1984 and that is now twenty years ago. 9. As Advocate Parslow has said, he did not break into the house and he admitted that he lost his temper. He did use his fists, no weapon was used and, perhaps more importantly, there was no kicking. 10. He has apparently established a new relationship and his fifteen-year-old son is dependent upon him. 11. Comparing case with case can be of little forensic value. We have been particularly impressed, however, by the references supplied by Advocate Parslow and of course by the fact that Lavery has abided by the terms of his bail over a considerable

period of time. 12. We feel, in deference to Crown Advocate Binnington, that these are exceptional circumstances and we cannot see that prison is going to serve a useful purpose. 13. We therefore are going to follow the recommendations of the Probation Officer and we are going to impose an 18 month Probation Order. You will be bound to complete the Aggression Training Course and your drinking problems will be assessed and worked on through the Alcohol Study Group. Now, this is not an easy course you are going to do, and we have to tell you that if you breach the order, you will be brought back to Court and you may be sent to prison; you understand that. The Probation Officer will deal with the matters that you have to comply with when you leave the Court. Thank you very much Mr Binnington; thank you Mr Parslow. Authorities Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n): pp.287-94; 310-19. Harrison -v- AG [2004]JCA046. A. G. -v- Bennett (19 th January 1996) Jersey Unreported; [1996/13]. A. G. -v- Henry (30 th July 1999) Jersey Unreported; [1999/138]. A. G. -v- Seaward (10 th November 2000) Jersey Unreported; [2000/222]. A. G. -v- Ross (27 th July 2001) Jersey Unreported; [2001/165]. A. G. -v- Foy (11 th September 2001) Jersey Unreported; [2001/194]. A. G. -v- Le Masurier [2003]JRC168. Page Last Updated: 24 Jun 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 27 October 2026 · Esheria