

JERSEY / JUDGMENT

AG v Le Geyt 23-Oct-2019 [2019] JRC 210 (23 October 2019)

[2019] JRC 210

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JUDGMENT

THE BAILIFF: 1. On 9 th September 2019 we sentenced the Defendant to six counts on the indictment as follows:- (i) Count 1

- illegal entry and larceny - 4 years' imprisonment (ii) Count 2 - obstructing a police officer
- 1 month imprisonment, concurrent to Count 1 (iii) Count 3 - illegal entry with intent
- 2 years' imprisonment, concurrent to Count 1 (iv) Count 5 - possession of MDMA - 3 weeks' imprisonment, concurrent to Count 1 (v) Count 6 - possession of cannabis - 1 weeks' imprisonment, concurrent to Count 1 Making a total of 4 years' imprisonment. 2. At that time we reserved our reasons which we now give. 3. On 1 st May 2019 the Defendant was convicted following a trial in connection with illegal entry and larceny of York Farm Cottage ("the Cottage") which is Count 1 on the indictment. He had previously pleaded guilty to the other counts. During the course of the trial the Defendant made a submission of no case to answer in respect of a count of violently resisting arrest and was successful; the jury was directed to return a not guilty verdict to that count.

Facts

4. At approximately 8.34am on the 18 th October 2018 the Defendant and an unknown male were recorded on CCTV cycling past the Steam Clock heading west. 5. At approximately 9.20am a witness walking past the Cottage observed an unknown male step over the garden wall of the Cottage on to the pavement. The neighbour was aware that the occupants of the property, Occupant 1 and her daughter, Occupant 2, were at work. The neighbour viewed the action of the unknown male as suspicious (the Cottage had been burgled on an earlier occasion) and she telephoned the occupants to tell them what she had seen. They returned to the property shortly thereafter and noted that the rear gate and rear kitchen window were wide open, which was unusual. They looked through the patio doors and observed the Defendant coming down the stairs to the lounge and across the room to the internal porch door, unlocking it and walking out into the front garden. 6. Occupant 2 gave chase and caught up with the Defendant who said to her " Get off me or I'll put you to the floor ". 7. The Defendant continued his escape and his telephone records disclose that at 9.22am he

received a message from an unknown third party, to which he replied at 9.47am to the effect that he had " got rumbled " and agreed to meet in town. 8. The police were called and began searching the area. The Defendant was initially found in St Lawrence not far from the Cottage and ran from the police, jumping into a neighbouring property. With the assistance of the property owner the police located him in a barn and there was a confrontation. During the course of that confrontation the Defendant removed a folded penknife from his pocket and threw it away. It hit an officer accidentally, although as a result of his actions and in the light of what was known about the Defendant's antecedents, he was PAVA sprayed and arrested. 9. A rucksack that he was carrying contained a number of items including certain items taken from the Cottage. A subsequent search disclosed that the Defendant was in possession of MDMA powder and cannabis resin. 10. Subsequent analysis disclosed that the MDMA weighed approximately 465 milligrams and the cannabis resin weighed approximately 4.8 grams. 11. It could not be said that the Defendant was cooperative at interview. He maintained that he had gone to the Cottage to challenge someone who was dealing in drugs on behalf of an unknown innocent female. He had attended with an unknown male, but had not himself entered the Cottage. The unknown male had thrust the bag into his hand as he escaped and the Defendant had not taken those items from the Cottage, but he had run away with the bag. 12. His version at trial was somewhat different. He maintained his innocence, but suggested to the jury that the householders were known to take drugs that the boyfriend of one of them was a drug dealer. 13. The Defendant has a substantial criminal record including for breaking and entering and larceny. He has in total been convicted of 175 offences, 38 of which were for theft and similar offences. 14. The offences were committed whilst on bail and it is clear that they involved a measure of planning given that the Defendant and an unknown man had to travel deliberately to the Cottage. 15. We view the fact that the Defendant had threatened Occupant 2 who had given chase as an aggravating factor, as is the fact that at an early stage he had sought to implicate the occupiers of the Cottage in unlawful activity in connection with drugs. 16. It is also clear that the occupiers of the property and indeed Occupant 1's daughter who had also attended with them (and was a previous occupier) have been badly affected and troubled by the offending. We have read their victim impact statements with care and we accept that this incident has caused them to become anxious. We have no doubt that the effects will be of significant duration. 17. Guidance has been given to the courts in the case of AG v De Silva

[1997] JRC 218 in which Philip Bailhache Bailiff delivering the judgment of the Court said this:-

"The Attorney General then referred to two cases which had recently come before the Court of Appeal in England. The first was R v Edwards & Brandy (9 th May 1996) Unreported Judgment of the Court of Appeal of England. The Court there reviewed a number of sentences for burglary of an unoccupied dwelling-house, each defendant featuring an appellant with a previous record for like offences, and concluded: 'There is a limit to the weight that can be attached to previous decisions of this Court in the field of sentencing (see observations in, inter alia, Sawyer

(1984) 6 Cr App R (S) 459, at 461), but we think that we can infer that the bracket centres upon two years, with variations either way to reflect the particular circumstances of the case.

Further, we would infer that upon conviction - that is, without the mitigation of a plea

- the bracket would centre upon three years." The Court then examined some reported decisions in relation to the burglary of occupied dwelling-houses and stated: "In the light of this sparse guidance, we cautiously think that burglary of an occupied dwelling house at night, even if mitigated by a plea of guilty, would not normally attract a sentence of less than three years' imprisonment and, if not so mitigated, the bracket would start at four years.' The second was *R v Brewster & Others* (2 nd June 1997) Unreported Judgment of the Court of Appeal of England, where the Court, presided over by Lord Bingham considered a number of appeals and sentences for burglary. The Court made some general remarks about the offence itself which we set out below. 'Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possessions of particular value to him or her. To those who are insured, the receipt of financial compensation does not replace what is lost. But many victims are uninsured; because they may have fewer possessions, they are the more seriously injured by the loss of those they do have. The loss of material possessions is, however, only part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the priority and security of their own homes. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity. Even where the victim is unaware, at the time, that the burglar is in the house, it can be a frightening experience to learn that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar. Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night; but that does not mean that the offence is not serious if the victim returns to an empty house during the daytime to find that it has been burgled.' The Court went on to emphasise that the seriousness of the offence could vary almost infinitely from case to case, and expressed some doubt as to the levels of sentence suggested in *R v Edwards & Brandy* ." 18. And later in the judgment the Court said:- "In our judgment however the centre of the brackets identified in *R v Edwards & Brandy* does provide useful guidance, in the context of the sort of case with which this Court often has to deal, as to the appropriate sentence. We emphasise that there are many aggravating factors which might lead the Court to impose a higher sentence. Such factors include, amongst others, previous convictions for this type of offence, attendant violence or the threat of violence, the fact that a break-in was committed at night, evidence of planning and accompanying vandalism. On the other hand mitigating circumstances may counterbalance any aggravating features and may even on occasion lead to the imposition of a non-custodial sentence. Nevertheless the distress almost invariably suffered by a householder as a result of the breaking and entering of a dwelling-house is a feature which ought to be reflected in the sentence imposed." 19. In *AG v Moreira*

- [2018] JRC 215, an accused who burgled a private dwelling during the day and who stole personal items was, following an early guilty plea, sentenced to three years' imprisonment. 20. In *AG v Falle*
- [2019] JRC 062 the accused was sentenced to three counts of illegal entry and larceny again following a guilty plea. He had been seen by an occupier of the property that he burgled and he was sentenced to a total of four years' imprisonment. 21. The Crown in our view correctly identified the instant offending as illegal entry of an unoccupied dwelling house during daylight hours. Accordingly, the focal point for the Court's consideration is a term of imprisonment of three years. We do not consider the fact that the occupiers returned to the Cottage as taking the offending into a different category because there is no reason to suppose that the Defendant entered the Cottage in the knowledge or belief that anyone was at home. In fact the Cottage was unoccupied when he entered it. 22. We have already identified other features that we view as aggravating, specifically the fact that the offence was committed whilst the Defendant was on bail, there was an element of planning, the threat of violence and, to an extent, the fact that the Defendant sought to implicate the occupiers of the premises in unlawful drug use. 23. We do not, however, accept that the other factors identified by the Crown as aggravating features should be treated as such. It was suggested that the Defendant carried out the offending whilst under the influence of intoxicants, but we can see no clear evidence that such was the case. It was also suggested that a sum of money had been lost to the occupiers, but the Defendant was not charged in Count 1 with the theft of that money and the chattels items set out in that count have in fact been recovered. 24. The Defendant has been before this Court on a number of occasions and clearly has no benefit of either a guilty plea, nor is he of good character. It is also fair to say that expressions of remorse have characterised his earlier appearances before this Court and it may be supposed that the Court accepted those and sentenced him accordingly. 25. The Defendant has provided to us a lengthy and detailed letter of remorse. The Crown suggests that we should give it little weight because clearly remorse in the past has not prevented the Defendant from reoffending. 26. We do not think that we should ignore the Defendant's expressions of remorse. We think that the expressions that we have before us are of a different order from those that have been made in the past. The contents of the Social Enquiry Report reflect that the Prison staff have noticed an increased maturity and positive progression on the part of the Defendant and that he appears to be making increasing efforts to lead a more conventional lifestyle. In a supplemental report it is noted that the Defendant "has approached his current custodial sentence with a more positive and mature attitude" and that, consistent with feedback from Prison staff, "his overall presentation has vastly improved". He is apparently engaging well with psychology intervention. He is currently examining his identity and consistently stated he wants to make changes towards living a more pro-social lifestyle. He has during his period in custody consistently expressed regret for allowing his life to deteriorate once again into further offending. In conclusion in the supplementary report, the author notes:- "What has altered since his time in custody is his attitude, presentation and improved level of

maturity which is in stark contrast to previous. His expressions and clear cognitive shifts in relation to his offending behaviour and is engaging with prison psychology in an attempt to progress his opportunities on release to a more positive and pro-social position." 27. We believe that this is consistent with the expressions of remorse passed on to the Court by the Defendant in his letter and we hope that there are genuine signs of improvement. 28. In the circumstances and taking what we assess as aggravating features into account, we think that the conclusion of 5 years' imprisonment moved for by the Crown is somewhat too high and accordingly we impose the sentence set out in the first paragraph with regard to Count 1. 29. The conclusions moved for by the Crown with regard to the other offences were not challenged by the Defendant and in all the circumstances we believe them to be correct. 30. We ordered the forfeiture and destruction of the drugs. 31. The issue of the costs of the Count on the indictment in respect of which the jury were directed to return a not guilty verdict have been left over for argument on a subsequent occasion. Authorities AG v De Silva

[1997] JRC 218 . AG v Moreira

[2018] JRC 215. AG v Falle

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