JERSEY / JUDGMENT

AG v Le Lay [2022] JRC 185 (06 September 2022)

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JUDGMENT

The commissioner: 1. The defendant is to be sentenced for three counts of grave and criminal assault and one count of malicious damage of which he was convicted after a five day Assize trial. The assaults all took place on the same day. 2. At the outset of this sentencing hearing the defendant applied for Jurats Crill, Pitman, Dulake and Austin-Vautier and myself to be recused on the general ground that he is known to all of us and that we have all had dealings with him in the past. It is the case that we have all, bar one Jurat, sat on cases involving the Defendant, Jurats Crill, Pitman and Austin- Vautier on bail applications, and I presided over the Defendant's trial as well as numerous earlier hearings. Jurat Dulake has never had any dealings with the Defendant. The fact that Jurats or Judges have sat on previous hearings is simply not a ground for recusal. In relation to Jurat Austin-Vautier when he was Chief Officer at Home Affairs, the Defendant had assisted the Island Military Liaison Officer with various duties, but he had never been employed, and Jurat Austin-Vautier is quite satisfied that this does not present any difficulty in him sitting. The Court has rejected two previous applications by the Defendant to recuse Jurat Austin-Vautier on those grounds. The Court was clear that a fair minded and informed observer would not conclude that there was a real possibility that any of us would be biased and the application to recuse was refused. 3. Having announced that decision the Defendant left the Court abruptly. He was given the option of returning which he refused and demanded to return, and did indeed return, to the prison. The Court determined to proceed with sentencing in the Defendant's absence in the interest of justice, having regard to the factors in Article 88 of the Criminal Procedure (Jersey) Law , and the Defendant was informed that we would do so before leaving the Royal Court building. However he is now participating in the sentence which we are about to impose via video link. 4. The first two assaults were committed on his neighbours, the First and Second Complainants, who lived in the same block of flats of which the First Complainant was the caretaker. The Second Complainant is 54 and the First Complainant is 62. 5. Tension had arisen in the period leading up to the assaults and two issues brought the Defendant to the flat occupied by the Complainants; a parcel that the Defendant had said had gone missing and his receipt of a letter from the landlord of eviction. The Defendant wanted the contact details of the property manager which the First Complainant had been instructed not to give him. The Defendant, who is physically much taller and larger than either of the Complainants, was

wearing shorts but no shirt. After exchanges the Defendant began swearing at the First Complainant and then punched him on the left side of his temple. The First Complainant was particularly concerned for his safety as he had undergone a triple by-pass operation some four years earlier. He took a riding whip to defend himself. The Defendant pushed the First Complainant onto a sofa, took the whip from his hand and used it to hit him. At some point the Second Complainant came between the Defendant and the First Complainant to stop the attack. The Defendant grabbed her right breast and twisted it forcefully. He then grabbed the Second Complainant by the neck and tried to strangle her. At one stage the Defendant grabbed the hand of the second complainant and tried to bite it. He then placed both of his hands on top of her head and twisted it with force and she thought she was going to die. In her attempts to push the Defendant from the flat, he pushed over a chest of draws and broke a chair. She managed eventually to push the Defendant out of the flat. 6. Both Complainants suffered serious and sustained bruising in the attack from which they have now fully recovered, but it is clear from their victim personal statements that this incident of violence in the safety of their home has affected them both deeply. 7. The Defendant was arrested and taken into custody that day. In the custody suite he suddenly got angry and threw a paper cup of water backwards towards police officers. He was taken to the floor where he bit the leg of a police officer forcefully, piercing the skin through the police officer's trousers and probably a facemask that he was wearing. 8. The Defendant has a long record for offences of violence dating back to 2010, the last being in March 2015. Noting that the Defendant had been diagnosed with Asperger's Syndrome and with a number of personality disorders, the Court in 2015 took the unusual step of reducing the length of the sentence of imprisonment that it would otherwise have imposed, to the period of treatment that had been recommended in a secure hospital in England to which the Defendant was keen to go, so that at the end of his treatment he would be released back into the community. 9. The report of Dr Tim McInerny as to the defendant's progress at Brockfield House reads as follows : "Alex Walters informed me that following Mr Le Lay's transfer to Brockfield House Medium Secure Unit he had initially been compliant but had become after one month, increasingly challenging to staff and eventually violent to property. Brockfield House also reported that Mr Le Lay had increasingly resisted engagement with treatment and so had decided to return him back to custody." 10. Both psychiatrists, who have prepared reports for these proceedings, confirm that the Defendant is autistic and meets criteria for Dissocial Personality Disorder and emotionally unstable personality traits. According to Dr Irala : "This is charactered by disregard for social obligations and callous unconcern for the feelings of others. There is gross disparity between behaviour and the prevailing social norms. Behaviour is not readily modifiable by adverse experience including punishment. There is a low tolerance to frustration and a low threshold for discharge of aggression including violence; there is a tendency to blame others or to offer plausible rationalizations for the behaviour bringing the patient into conflict with society." 11. Dr Irala reached this conclusion at paragraph 18.6 of his : "On a larger picture a connection between autism spectrum disorder and Mr Shawn Le Lay's offending can not be excluded although this is heavily influenced by his personality issues. He began relying excessively on the police and the prison service to receive the support he needed, using his temper and anger to get his own way. In my opinion to break this chain of repeat offending, he

would benefit from a stay in a Medium Secure Forensic Autism Unit for treatment, rehabilitation and to manage the risks he poses towards himself and others. I recommend that if Mr Le Lay receives a prison sentence, then Jersey's Mental Health Department should support his transfer to such a facility." 12. Dr Hillier states at paragraph 79 of his report that " personality disorder is amenable to treatment " and that treatment for the defendant " is an important part ", he said, " of his future prognosis" . He says in his conclusions at paragraph 9 " In any event Mr Le Lay will benefit from some additional specialised support for people with Autism Spectrum Disorder and Personality Problems through a specialised service depending on the outcome of these proceedings which may include a hospital setting.' 13. The Crown takes a view that, despite the advice of Dr McInerny in 2015 that at that time the Defendant was best managed in the community, this is a case where the Court's duty to protect the public takes precedence and that a lengthy prison sentence is inevitable to protect the public. 14. There is no Pre-Sentence Report as the Defendant has refused to engage with Probation but in 2015, he was assessed at a high risk of general reconviction with the writer offering this observation at paragraph 41 "Mr Le Lay's use of violence is completely unpredictable and escalating in both frequency and severity; it is also indiscriminate in nature demonstrating a disregard for gender, role, age or whether the victim is known to him or not'. 15. The Crown has taken the Court through the factors set out in the case of Harrison v AG

[2004] JLR 111 and we agree with the Crown's assessment as to those factors, in particular that these offences were to some extent impulsive but were without provocation. We agree with the Crown that the two separate incidents require consecutive sentences, especially as the second incident involved an assault on a police officer and a bite which carries with it the risk of infection. For that see Whelan on Aspects of Sentencing in the Superior Court of Jersey and the case of AG v Vattier

[2007] JRC 155 . 16. The Crown move for a sentence of 3 years for the assault on the First Complainant and 4 years for the assault on the Second Complainant, because of the greater severity of that attack and it was carried out on a female. It moves for a sentence of 6 months concurrent for the malicious damage. 17. As to the assault on the police officer, the Crown move for a sentence of 1 years' imprisonment consecutive, reduced because of the totality principle. That would make a total sentence on the conclusions of the Crown of 5 years. The Crown also seek a Restraining Order for 7 years assuming its conclusions are agreed by the Court, prohibiting the defendant contacting the complainants directly or indirectly. 18. In terms of mitigation, the defendant did not plead guilty, forcing that the Complainants in particular, to give evidence at the trial and it is fair to say as the Prosecution do, that he was uncooperative throughput the proceedings. There has been no expression of remorse to this Court, although it is fair to point out, as Advocate Steenson did, that he expressed some regret at the way the incident with the Complainants had developed. 19. Advocate Steenson as Amicus has done his best to make submissions in mitigation, which we have taken into account, pointing out that the Defendant's conduct would have been influenced by his mental health issues, and submitting that a sentence of 4 years for the assault on the Second Complainant was

arguably too high having regard to the facts of the cases of Harrison v AG

[2004] JLR 111 and AG v Samson

[2003] JRC 146. 20. He agreed with the concerns expressed by the Court that in the light of the recommendations of the two psychiatrists, it was in the interest of the Defendant and indeed the community, that the possibilty of treatment for his mental health issues be explored. There were no reports before the Court expressly addressing the issue of treatment or of a secure hospital identified to receive the defendant for that purpose. The Court therefore has two choices, firstly, to adjourn the proceedings in their entirety for reports to be commissioned and then to deal with both sentencing and any other orders under the Mental Health (Jersey) Law 2016 at the same time, or secondly to impose the appropriate sentence today and adjourn the possible making of a transfer order under Article 69 of the Mental Health (Jersey) Law 2016 , directing the commissioning of reports for that purpose in the meantime. 21. The Court has decided to proceed with sentencing. In our view the interests of justice require the Court to take into account, firstly the interests of the victims, particularly the Complainants in this case, to have closure on this issue and secondly the duty of the Court to protect the public which we agree should on the facts, of this case take precedence. A further, but less significant factor, was the imminent retirement of the Commissioner who presided over the trial, and who would not be available to preside over any adjourned sentencing hearing. 22. As to the sentences moved for by the Crown, the Court was unanimous in its view that the assaults on the Complainants were very serious and of a quite different nature to the facts of the cases of AG v Harrison and AG v Samson . This was an intrusion into the safety of the home of the Complainants, effectively defenceless against a man of the size and physique of the Defendant. The assaults upon the Second Complainant were particularly egregious in our view and could have resulted in very serious injury. As we have said they have both been deeply affected by this incident. We are therefore going to increase the sentence in respect of the Second Complainant to reflect the seriousness of the assaults upon her, but we are otherwise going to grant the conclusions of the Crown. 23. As to the Restraining Order we find that the criteria for the making of such an order under Article 5(2) of the Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 is met. Article 5(5) provides that such an order can be made for an indeterminate period and we are going to make such an order. Ordinarily the Court seek to place a limit on the duration of such orders, but in this case, we take into account the truly frightening conduct of the Defendant and the ages of the Complainants, and we conclude that they deserve the protection of such an order for the rest of their lives. We make such an order in the knowledge that the Defendant can apply at any time under Article 7 of that Law to have it lifted or varied. 24. So turning to the sentence, which we impose in the now absence of the Defendant, under Count 1 he is sentenced to 3 years' imprisonment. Count 2, to 4½ years' imprisonment, concurrent to Count 1. Count 3, 1 years' imprisonment consecutive to Counts 1 and 2. Count 4, 6 months' imprisonment concurrent to Counts 1, 2 and 3 which makes a total of 5½ years' imprisonment. 25. We furthermore make a Restraining Order for an

indeterminate period that the Defendant shall not contact directly or indirectly the Complainants. 26. Finally, the Court also adjourns the making of a Transfer Order under Article 69 of the Mental Health (Jersey) Law 2016 or other appropriate orders to a date to be fixed and directs the Crown to procure the commissioning of reports from two registered practitioner, one of whom must be an approved person, to meet the requirements of Article 69, and in particular to advise as to whether it is appropriate for the Defendant to be treated in an approved establishment and whether arrangements have been made at an approved establishment for his admission. 27. The Court directs the Crown to fix a date for that hearing and an earlier directions hearing before a single Judge, one hour, to review progress in the matter. 28. The Court finally orders the continuation of Advocate Steenson in his role as Amicus Curiae for which we are grateful. Authorities Criminal Procedure (Jersey) Law 2018 Harrison v AG

[2004] JLR 111 Whelan, Aspects on Sentencing, 3 rd Edition AG v Vattier

[2007] JRC 105 AG v Samson

[2003] JRC146 Mental Health (Jersey) Law 2016 Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008 Page Last Updated: 04 Nov 2022 Back to top About JLIB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- This website is not compatible with your web browser. You should install a newer browser . If you live in Jersey and need help upgrading call the States of Jersey web team on 440099. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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