

JERSEY / JUDGMENT

AG -v- Marques [2009]

JRC 103 (22 May 2009)

[2009] JRC 103

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JUDGMENT

THE commissioner: 1. There are seven counts on the First Indictment and two counts on the Second Indictment. The most serious result from an incident that occurred in the early hours of 16 th November, 2008. Marques is now 20 years old but at the time these offences were committed he was 19 years of age. He was charged with a man called Vieira who was sentenced, after severance of the charges, to 180 hours of community service. Vieira declined to finish the community service order and was returned to Court where he agreed to return to Madeira and not return to Jersey for 3 years. 2. The first count involves breaking and entering a commercial property at Springside, Trinity. A skylight was forced, the CCTV hard drive and cables for the camera were removed and £150 in cash was stolen from the letterbox. The second count, again at Springside, Trinity, shows that a door was forced open and a Renault Megane was missing from the garage. That car was seen at 1:35 on the morning of Sunday 16 th November, with two people, Vieira and the accused inside. The accused was driving. He was travelling at great speed. A Police vehicle followed the car with blue lights flashing. It was driven dangerously, well in excess of the speed limit, and at Rue de Neuilly, a 15 mile an hour lane, he drove at 60 miles an hour until he crashed into and demolished a garden wall. The conditions were wet and slippery. Vieira was found in the car and later, at about 3:00 in the morning, the accused was found hiding under a bush in Janvrin Road near where he lived. He made the comment to the Police, "I stole a car" and was breathalysed but the test proved negative although at interview Marques told the Court that he drank wine, beer and some six to seven vodkas at a party that evening. He had also smoked heroin during the week. It is a long walk from town to Springside. He frankly admitted that the break-in to what was his uncle's garage, was to steal money to buy heroin for Vieira. 3. As the Crown Advocate has outlined he stole and took away the CCTV recorder which has since been recovered. He also took an iron bar which was used to break into the other property where he stole the Renault car. He freely admitted that he didn't have insurance or a valid driving licence. He was free and frank in interview. He told the Police that he had not seen the road signs when he crossed the junction without stopping. He left Vieira in the vehicle and ran from the scene. 4. He was remanded by the Magistrate's Court on strict bail conditions until sentencing today. However on Sunday th April, he was seen in St Brelade driving a turquoise Daihatsu car from the car park onto the main road. He was stopped and he admitted smoking cannabis. He was with a

Mr Fernandes, not his uncle, and not with Vieira. Apparently it was Mr Fernandes who had driven the car to the car park. Marques did not realise that his provisional driving licence was out of date but he was of course under curfew as part of his bail stipulations and this offence occurred at 11:30 pm, one hour after the bail stipulation and he was on the Five Mile road and not in Town. 5. We have considered most carefully AG-v-Gaffney 1995/107 where the Court set a benchmark of 18 months for entering commercial premises at night. This offence occurred in the middle of the night, it was pre-planned and damage was caused. Dangerous driving has its penalties and a term of imprisonment not exceeding 2 years might follow although the Magistrate Court guidelines set a custodial sentence for 3-6 months with disqualification and we have of course had careful regard to the provision of the Road Traffic (Jersey) Law 1956 and to the Motor Traffic (Third Party Insurance)(Jersey) Law 1948 . The Crown Advocate has pointed out that where concurrent sentences are imposed, sentences may be increased and of course the defendant fled the scene of the crash leaving Vieira in the vehicle and we have seen how he has been dealt with. 6. We have read most carefully the letters that Marques has sent, but he was driving the car. He and Vieira decided to break into the premises at Trinity and walked the considerable distance from town in order to break into his uncle's store. The argument about supporting his family in Madeira has caused us some difficulty but he has come to Jersey for the right reasons and he has taught himself English. He has no previous convictions, he pleaded guilty, he has shown remorse and his age of course, is very important, although he was in breach of his curfew which ran out at 10:30 pm, and he was at the Five Mile road an hour after that when he was told by the Court to be at home. 7. Looking at the Criminal Justice (Young Offenders) (Jersey) Law 1994 the Court is not permitted to impose a custodial sentence on a young offender unless no other sentence can be justified. Under these criteria (i) the person has a history of failure to respond to non-custodial penalties and is unable or unwilling to respond to them; (ii) only a custodial sentence will be adequate to protect the public from serious harm; or (iii) the offence although the totality of the offending is so serious that a non-custodial sentence cannot be justified. He has been assessed by probation as at a low risk of re-offending. We have taken into account all the wise words of the Crown Advocate, but this was not a spree. We are, with some reluctance, going to impose a community service order. 8. We are going to impose 210 hours' community service order, which is the equivalent of 15 months which the Crown Advocate asked for, and you are disqualified from driving for 24 months. Now if you offend again the consequences will be extremely serious, you appreciate that. Count 1 and 2; you will serve 210 hours' community service, Counts 3, 4 and 9; 90 hours' community service order, concurrent, Count 6; 120 hours' community service order, concurrent, Counts 7 and 5 of the First Indictment and Count 1 of the Second Indictment you are fined on each count £100 concurrent. There will be imposition of a further 40 hours' community service if the fines are not paid and that again, is concurrent. 9. There will be no deportation order made. Authorities AG-v-Gaffney 1995/107. Road Traffic (Jersey) Law 1956. Motor Traffic (Third Party Insurance)(Jersey) Law 1948. Criminal Justice (Young Offenders)(Jersey) Law 1994. Immigration Jersey Order 1993. Magistrate's Court Guidelines. Page Last Updated: 15 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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