

JERSEY / JUDGMENT

AG v Robertson [2022] JRC 264 (02 December 2022)

[2022] JRC 264

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JUDGMENT

THE DEPUTY BAILIFF: 1. Jake Marley Robertson, you were convicted by the jury after a three day trial on 29 th September 2022 and, having regard to that verdict, remanded in custody when you were convicted. 2. You initially pleaded guilty to this offence and then changed your plea in this Court to 'not guilty' and you were warned when you did so of the consequences, that is to say that if you were convicted after trial subsequently then you would be unable to point to any credit for a plea of guilty. 3. These assaults took place in broad daylight in front of members of the public, including young families. They were appalling. It was fully accepted by the Crown and the Court today that it was your brother who invited you to go paddle boarding on 31 st July of last year, that your brother was intoxicated and you were not; that your brother's behaviour was annoying and upsetting so far as certain members of the public were concerned and that he also provoked you severely before you began fighting, including shouting at you, swearing at you, throwing a stone at you whilst you were sitting in his van, pulling your shorts down and then biting you. Indeed two witnesses in the course of the trial accepted that your brother "relentlessly antagonised" you. 4. However, your response was disproportionate and your plea of self-defence and your alternative plea that you believed this was necessary behaviour in order to protect your brother from harm was rejected by the jury. 5. The CCTV footage which the jury saw, and which we have seen again today, showed you, at a time when you accepted in evidence that your brother posed no immediate threat to you because he was on the ground and you were free to walk away, deliberately kick your brother in the head. The kick was so forceful that it knocked him unconscious. Eyewitnesses were taken aback by the ferocity of your assault. One told the jury that you kicked your brother " as hard as you possibly could " and compared it to kicking a football. He said that had your brother's head been a football it would have gone to the halfway line. The noise of your shoe hitting your brother's head was described as " sickening " . Your brother was unconscious for several minutes and when he came round he was plainly heavily affected, staggering when he got to his feet. 6. A member of the public with a background in health care and sports trauma put your brother in a "jaw thrust" to keep his airways open as he lay there. You were told to keep calm and keep away from your brother. Members of the public at this time telephoned the police. 7. When your brother regained consciousness and staggered to his feet, plainly disorientated, you and a member of the public followed him near to the sea wall

where he collapsed. He then regained his feet and attempted to climb the sea wall. A member of the public and you pulled your brother away from the sea wall because you were concerned that he might harm himself. 8. Then, when your brother got down from the sea wall and you both made your way from the pier up the small roadway which leads to the road from the bay, the footage showed you deliberately tripping up your brother when he was already unsteady on his feet, which was in our view a callous and unpleasant act. Finally, you sat on your brother who was lying on his front. You were holding one of his arms behind his back with your other arm across his neck. Your brother was heard to shout " He's hurting me" and " He's trying to kill me" . Members of the public told you to let go as they were concerned that he was struggling to breathe. When you did, your brother regained his feet, you grabbed him from behind and, shortly thereafter, you picked your brother up by his waist and threw him headfirst on to the concrete below. Five eyewitnesses, four prosecution witnesses and one defence witness, recounted hearing the noise of your brother's head hitting the concrete. At least one member of the public thought your brother was now dead and said, " I thought he'd killed him, I thought there was going to be a dead body" and the lady who went to help him again said to you ' This could be manslaughter' . Another witness describes him as lifeless and out cold. It was upsetting for these people to relive and recount what you did to the jury. 9. The injuries that your brother sustained were mercifully not serious ones. This was a matter of pure chance. The injuries could have been extremely serious or even fatal. 10. You were arrested, interviewed, and you accepted that you lost your temper and you could have walked away, but nonetheless you pleaded not guilty and maintain that plea. 11. You are 25 years old and although you have previous matters recorded against you, none of them are relevant to this offence and none are serious. 12. We have read the Pre-Sentence Report with care and all the references submitted on your behalf, not least your letter and the reference from your brother and your girlfriend. The Court is full of people who support you and stand by you and think well of you, and we well understand why your brother blames himself for this offence as he of course instigated it. We have taken into account all that your counsel has said so well this morning on your behalf. 13. This was in some respects a prolonged assault in that about 10 minutes passed between you knocking your brother unconscious by kicking him in the head and then subsequently sitting on him with your arm round his neck in the way we have described, tripping him up and knocking him unconscious again when you threw him headfirst on to the concrete, ignoring the remonstrations of passers-by. 14. We broadly agree with the Crown's assessment of the seriousness of this case by reference to the Harrison factors (Harrison v AG

[2004] JLR 111) which we do not repeat. We do not agree with the Crown that the relationship between yourself and your brother aggravates this offence. We note, although it is by no means a comparator as what you both did was so different, that your brother was sentenced to 210 hours Community Service on his guilty plea which was a direct alternative to 15 months' imprisonment. We have been referred by both the Crown and the Defence to a number of other cases, other decisions of the Royal Court on different facts, but each case does turn on its own facts. 15. The Crown has called for a sentence of 3½ years' imprisonment. We regard this offence as too serious to be dealt with by way of a

non-custodial sentence. As I have said we fully accept that your brother initiated this, but violence of this nature in a public place in the middle of the day is shocking, intolerable and must be met by a substantial immediate custodial sentence. We found it chilling that you deliberately dropped your brother on his head knowing that he was already likely to be carrying a head injury - as minutes before you had knocked him out by intentionally kicking him in the head. 16. The least sentence the Court can impose in these circumstances is 2 years and 9 months' imprisonment and that is the sentence of the Court. Authorities Harrison v AG

[2004] JLR 111 . AG v Nolan

[2002] JLR Note 31] AG v Da Silva

[2021] JRC 168 AG v Freitas

[2020] JRC 053A AG v Mendonca

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