

JERSEY / JUDGMENT

AG v Shotbolt (Royal Court : Hearing (Criminal) : Bailhache, W) [2025] JRC 181 (8 July 2025)

[2025] JRC 181

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JUDGMENT

THE COMMISSIONER: 1. On 12 May, this Court sentenced the Defendant to a term of three years' imprisonment concurrent on two charges, the first of criminally breaking and entering premises occupied by his former girlfriend and, the second, committing a grave and criminal assault therein on the victim who was present on the premises. The case has a somewhat convoluted procedural history, which is why the judgment containing the sentencing remarks was reserved. 2. The Defendant was first indicted on 5 April 2024 when he entered guilty pleas to the two charges in question. He was remanded in custody for sentence before the Superior Number on 8 July 2024. The Court noted on 5 April that the basis of plea was yet to be submitted. The defence case statement was in fact handed up on 8 July and the Court determined that there were a number of material differences between the Crown case and the case for the defence and directed that there should be a Newton hearing to consider the issues in dispute. Commissioner Binnington was sitting on that day with five Jurats, including Jurats Le Cornu and Opfermann, and it is convenient that those two Jurats were part of the Court on sentencing and able to confirm that it was the alleged kicking to the head and face after rendering the victim unconscious which the Court considered needed to be resolved. The Crown's summary at that time included this brief description: "The Defendant, in an angry and jealous rage, kicked the front door down, before immediately putting his hands around the man's neck and strangling him, rendering him unconscious. The Defendant then kicked or stamped on the man's face before attempting to leave the scene." 3. These allegations of strangling and kicking were denied - the Defendant contended that the victim threw the first punch, that the Defendant neither choked nor strangled him, but that he did apply a headlock and he did punch him several times in the course of the fight before the victim became insensible. The Defendant asserted he did not kick or stomp on the victim's face or any part of him. 4. Following various directions, a Newton hearing was fixed for 18 and 19 March before me, sitting with Jurats Le Heuzé and Berry. It is noteworthy that the directions were issued by Commissioner Sir Michael Birt, and that other hearings have taken place before the Deputy Bailiff. We mention that because it would be desirable, if possible, within the Court's diary, to avoid a situation by which different judges (in this case four) deal with the criminal case on a guilty plea at different times within the Royal

Court. It is also desirable that where the Royal Court has determined after a contested hearing that a Newton hearing would be desirable, the Jurats sitting on the Newton hearing should at least include one if not both of the Jurats on the Court which has made that order; and furthermore that, if this is possible with their respective diary commitments, then the Jurats who sit on the Newton hearing should be listed to deal with the sentencing thereafter. It is undesirable that the advantage of two Jurats hearing the evidence on a Newton hearing should not be part of the Court which deals with sentence. Counsel are requested to assist the Bailiff's Judicial Secretary in this respect when the relevant dates are found. 5. At all events, the issues which the Court had to consider at the Newton hearing were these: (i) Did the Defendant throw the first punch? (ii) Did the Defendant exert force on the victim's neck such that he went limp? (iii) Whilst applying pressure to the victim's neck, did the Defendant say he was going to kill him or his former girlfriend? (iv) Did the Defendant kick or stamp on the victim's head or face? 6. At the Newton hearing, both his former girlfriend and the Defendant gave evidence. The victim of the assault did not give evidence and indeed declined to make a statement to the police. 7. The Newton court found that each of the four issues reserved for consideration was resolved in favour of the Defendant, the Crown having not established its case to the criminal standard in those respects. The facts which the Newton court found to be established were these. 8. The Defendant and his former girlfriend had been in a relationship between approximately April 2023 and Christmas 2023 when, according to her, she ended that relationship. Nonetheless, she and the Defendant remained in touch via text message and telephone calls and indeed they met up a few times. On 3 February 2024, she went out with her friends for her birthday. The Defendant was not invited but subsequently at either Chambers or the Royal Yacht, they did bump into each other, the Defendant also having been out with a different party of friends that evening. 9. His former girlfriend could not recall meeting the Defendant that night, but it is apparent that they were at least in the same premises at one point or another because he had sent her text messages commenting on the company she was keeping. The content of those and other text messages over the evening made the position absolutely clear. On his part, he was very anxious to keep in touch with her, expressing his love for her at one point, and he was throughout respectful and polite. On her side, she made it plain that she wanted to be left alone and not have communications with him that evening. At one point she did agree they would talk the following day. 10. Her evening out concluded at Mimosa shortly after 1am, when she went home where the party, with her friends, continued long into the early hours of the morning. By approximately 7.30am, she and the victim were the only persons left in her flat. The doorbell rang and she noted that it was the Defendant. She asked him to leave. He asked to come inside but she told him she was calling the police, which she then did. The victim is alleged to have said words to the effect of "Go away, we're having sex". At about the same time, the Defendant started to kick in her front door and ultimately was successful in that. 11. We have read her personal statement in which she describes how the break into her flat has caused her a great deal of anxiety. She says she fears for her safety when the Defendant is released. She wants nothing further to do with him. 12. It was clear that there was then a scuffle between the victim and the Defendant. It is not clear who did what in the first instance, although, according to his former girlfriend, the Defendant "flew" at the victim but at all events the outcome was that the Defendant, lying on the floor in the bedroom

with the victim on top of him, held the victim in a headlock, subsequently releasing him and delivering one or more punches to him which resulted in one of his front teeth being knocked out and the other one loosened. The missing upper incisor was reinserted by a maxillofacial doctor. At some point it seems clear that the victim lost consciousness. As a result of the assault, he had a concussion and a moderate head injury with large haematomas to the temple and bruising behind the right ear and elsewhere and lacerations to both lips. 13. Having heard the evidence, the Court was in no doubt that the grave and criminal assault was initiated by the Defendant, regardless of who threw the first punch. The Defendant was clearly under the influence of drink and drugs. He used severe force to kick in the front door. He has pleaded guilty to breaking and entering with intent to commit a crime, i.e. an assault. The Court therefore approached the question of sentence on the basis that this was an unprovoked and unpremeditated attack, under the influence of drink and drugs, which resulted in very unpleasant injuries, none of which fortunately are permanent, but which could have been much more serious. The Defendant's conduct clearly resulted from his inability to control his emotions, no doubt exacerbated by drink and the presence of the victim alone with his former girlfriend in her flat in a state of some undress. No weapons were involved. 14. This summary of facts was agreed by the Newton Jurats. The question arose as to whether or not it was a summary which could be shared with the sentencing court. The Criminal Procedure (Jersey) Law 2018 (the Law) provides at Article 50 that the trial court shall, if invited by the defence or the prosecution, or may of its own motion, communicate its view of the facts to the sentencing court where a defendant has been found guilty and the defence disputes the facts upon which that finding was made. For these purposes, the trial court means the judge or, where the defendant was tried by the Inferior Number sitting without a jury, the judge and Jurats. The Article does not in terms apply where there has been a Newton hearing. 15. For the Attorney General, Advocate Lee agreed that the summary of facts could be put before the Superior Number for the purpose of sentence. Advocate Corbett suggested it should not. He took what he described as an absolutist view, and contended that the focus should be strictly upon the basis of plea entered by the Defendant. In my judgment that is not the correct approach. First of all, the practice has generally been that Jurats who have sat on an Inferior Number trial do sit in the Superior Number for the purposes of sentence where the defendant has been found guilty and then remanded to the Superior Number for sentence. Quite obviously, those Jurats bring into the Superior Number the impressions of the evidence which they formed when reaching their conclusions about guilt. Having rejected the defence case statement for the purpose of finding guilt, it would be a nonsense to maintain that the Defendant was entitled to rely on part of it for the purposes of contesting the facts on which he was to be sentenced. Article 50 of the Law merely confirms what has always been the practice in the past. 16. Secondly, although Article 50 does not in terms apply to Newton hearings, there is in my judgment no reason why the findings of the Newton court should not be communicated to the sentencing court. Once again, in most cases, the Jurats sitting on the Newton hearing will form part of the sentencing court and it would be artificial and wrong to conclude that their knowledge of the case, which inevitably would have an impact on their decision in relation to sentence, should be kept to themselves. Until relatively recently, a Newton hearing in cases where sentence was to be imposed by the Superior Number, would take place before the Superior Number -

usually, but not always, the same Jurats would determine sentence. The difficulty and inconvenience of convening the Superior Number to deal with Newton hearings led to a change of practice so that the Newton hearing took place before the Inferior Number: but in my judgment this does not affect the principles which are to be applied. 17. Inevitably, where there is a Newton hearing, the Court hears a good deal of evidence, necessarily wider than the particular issues which have to be determined for that hearing. Nonetheless the wider evidence will give its own impression of the facts of the offence. It is entirely right that the sentencing court should have that feel for the case transmitted by the Newton court. 18. On behalf of the Defendant, Advocate Corbett submitted that the basis of plea was the basis upon which the Defendant should be sentenced and that the Crown had moved for a starting point of four and a half years imprisonment in relation to the grave and criminal assault on its summary of facts rather than the defence case statement. As a result of the Newton hearing, the Crown had reduced its conclusions by only six months. Had it been said at the hearing in July 2024 that the only difference between the facts as contended by the Crown and those as contended by the defence was a mere six months, there would probably have been no Newton hearing ordered at all. The Court accepted that this was a fair point to make. 19. Advocate Corbett also pointed to the useful cross-check which the Court when passing sentence can consider - in this case, there was an early guilty plea and normally one would have allowed a discount of one-third for that plea. The fact of the Newton hearing put that discount at risk, but as the Defendant had been wholly successful, the discount should be available to him. The cross-check which we have mentioned is to ask the question whether, had there been a trial, the grave and criminal assault would have resulted in a sentence of six years' imprisonment rather than four. It was absolutely clear to us that this would have been a manifestly excessive sentence, and we agree that in this case the cross-check was a useful exercise against which the Crown's conclusions could be measured. 20. The Defendant is not of good character, having a relevant previous conviction for grave and criminal assault for which the Royal Court in 2022 ordered him to complete one hundred and eighty hours of community service. He also has a previous conviction in 2023 for causing a breach of the peace for which he was bound over. He clearly has had a problem with recreational drug taking and excessive alcohol consumption. It appeared to us that he may be tackling these issues while in custody, where he has been held since April 2024. 21. As we have indicated, the Defendant entered a guilty plea on a basis which the Court has accepted, although the Crown did not. It is described in the conclusions as having considerable value, but the Crown tempers that by saying, in reliance on *AG v Goncalves*

[2022] JRC 097 that to have full credit the plea must be entered at the earliest opportunity and this plea was not. This case was considered by the Court of Appeal in *Nunes v Attorney General*

[2024] JCA 160 where at paragraph

[50] the Court said this - "Despite what is understood to be the outcome in *Goncalves* ... as to the immutable obligation to enter a plea at the first appearance, we consider that in a case where the Magistrate directs under Article 23(3) (of the Criminal Procedure (Jersey) Law

2018 as she did in this case without opposition from the Crown) that the defendant need not enter a plea, then full credit should be given to a defendant who enters a plea in compliance with the period of postponement set by the Magistrate. The obligation of the Magistrate to make an Article 23(3) direction only where it is necessary in the interests of justice will mean that this power will not lead to any unnecessary prolongation of proceedings. The alternative is that the order of the Court becomes a trap for the unwary and places the defendant in an invidious position, where the Magistrate determines that there is good reason to delay putting the charge, but the sentencing court does not accept that." 22. Goncalves therefore needs to be viewed with care. In our judgment it is important to recognise in this case that the Defendant was not given any time by which he had to enter a plea. The Magistrate's decision recognises that it was fair not to require him to do so, and he did in fact enter the plea at the first opportunity thereafter when indicted in this Court. He was entitled in our judgment to full credit for it and that makes the cross-check which we have described the more relevant. 23. In our view, the offences of breaking and entering and grave and criminal assault on this occasion formed part of the same incident regardless of the fact that there were different victims. The Court did not consider that consecutive sentences were justified, and not for reasons of totality. Nonetheless the offending is to be taken as a whole. Although different but concurrent sentences are passed, the breaking and entering aggravated the assault. Breaking into someone's home is itself serious for all the reasons which have been canvassed in this Court many times before. In addition, this was a serious assault causing the victim to lose consciousness; but on the other hand, no weapon was used, and no permanent injury has been sustained. 24. The Defendant provided some good references which the Court took into account. 25. Having regard to all these considerations, the Court sentenced the Defendant to three years imprisonment concurrent on each charge. 26. The Crown invited the Court to make an order under the Domestic Abuse (Jersey) Law 2022 ("the 2022 Law"). The Crown's position was that, following *Attorney General v Withe*

[2023] JRC 179 , an offence amounts to a relevant offence under the 2022 Law if it consists of multiple abusive elements even if it is charged as a single offence. In this case, the Crown's submission was that the offence of breaking and entering was preceded by messages and happened during an unwanted visit. It was followed immediately by the assault on the victim. On the Crown's approach, the behaviour could be abusive if it made use of another person, following Article 1(2) of the 2022 Law. Thus it was submitted that the breaking and entry and the assault on the victim, which took place in the former girlfriend's home, collectively amounted to a relevant offence as defined in Article 1(1) as they were a combination of offences that involved the Defendant acting abusively to his former girlfriend and consisting of more than one act. Accordingly, it was submitted that the Court had power to make a Domestic Abuse Protection Order and ought to do so in this case. 27. The messages preceding the breaking and entering offence were not in our judgment abusive and we consider we do not have jurisdiction to make such an order because there has been only one incident of relevant conduct against the complainant.

But in any event, the Court does not consider that on the balance of probabilities there is a risk of further domestic abuse towards her from the Defendant, nor that it is necessary to make the order. In the circumstances, Article 5 of the 2022 Law is not met. 28. We do however note the anxieties of the Defendant's former girlfriend as expressed in her personal statement, and we consider the lesser test in Article 8 of the Crime (Public Order) (Jersey) Law 2024 is passed. Accordingly, we make the restraining order against the Defendant in these terms: (i) The Defendant is prohibited from contacting, directly or indirectly, his former girlfriend; (ii) The Defendant is prohibited from going to any address that he knows or believes to be her home address; (iii) The Defendant is prohibited from going to any address he knows or believes to be her work address; (iv) Should the Defendant see or come into contact with his former girlfriend in any public or private place, he must take immediate action to avoid any breach of the order. 29. The restraining order shall continue for a period of five years from the date of sentence. Authorities Criminal Procedure (Jersey) Law 2018. AG v Goncalves

[2022] JRC 097 . Nunes v Attorney General

[2024] JCA 160 . Attorney General v Withe

[2023] JRC 179 . Crime (Public Order) (Jersey) Law 2024. Page Last Updated: 05 Aug 2025 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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