

JERSEY / JUDGMENT

AG -v- Starks [2017] JRC 045A (17 March 2017)

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JUDGMENT

THE BAILIFF: 1. You are here to be sentenced on three counts on an Indictment, a count of assault, a count of grave and criminal assault, which took place some six weeks later, and a count of resisting arrest. As a result of those offences you are also in breach of a probation order which was imposed approximately two months before the assault. The probation order was imposed for an assault on a woman. The assault which is the first count of the Indictment was an assault on your former wife, the grave and criminal assault which was the third count on the Indictment, was for an assault on the same woman you had assaulted in respect of the probation order. 2. The Court thinks that you have a serious problem in handling your relations with women. You need to learn some respect for women and the fact that these assaults are committed on women is something which the Court treats seriously. In particular in relation to the first count on the current Indictment of an assault on your former wife, that took place in her home and that is an aggravating factor and as was said in the case which was referred to AG-v-da Silva

[2014] JRC 223 when you assault a woman in her home you destabilise all the things that she has built in around herself to make herself secure and that makes it very serious indeed. In relation to that first count on the Indictment there are aggravating features that your 12 year old daughter was present to see the assault and that it was committed whilst you were on probation. 3. In relation to the grave and criminal assault, you caused injury with the slap causing a cut to your former girlfriend's face. It is notable that she was so frightened as a result of the assault that she hid in a cupboard and that gives a proper perspective as far as this Court is concerned to understanding the nature of the assault and the facts underlying it. 4. In relation to the count resisting arrest this offence was aggravated because it took place in the presence of your two children which was a serious aggravating factor and we say these things because we recognise that not just from what your counsel has said but because it is supported by what your former wife says that you care about your children and that makes it something that you should really take into account. 5. We have listened carefully to what your counsel has said in relation to the mitigation available to you. We have read the letter of remorse which you have sent us and we understand the point that is made in relation to the guilty plea and we have taken that into account. 6. Advocate Bell has referred us to the case of Da Silva where he says that the sentence

imposed was less than the Crown are now moving for and yet the offending was worse. Well, it may be that the sentence in Da Silva was too low, it is very difficult to compare just one case with another, we do not have all the facts of that case before us today but we have certainly taken into account all that Advocate Bell has said on your behalf. 7. You are sentenced on the matters today as follows. In respect of the breach offence and in the light of the time that you spent in custody pending that sentence and the full performance of the Community Service Order we are going to impose no further penalty. In relation to the first count on the Indictment, taking into account, as I say, all the mitigation that you have and the aggravating features, we think the Crown's conclusions are correct and you are sentenced to 4 months' imprisonment. In relation to Count 3, the grave and criminal assault, we have noted in particular that there were marks both sides of the neck which looks like a gripping of the neck as well as the cut to the face and the slap and the nature of the fear of the victim. We think the right sentence is 15 months' imprisonment and it should be served consecutively because it was a different offence from Count 1. In relation to Count 4, resisting arrest, this was your second offence of resisting arrest aggravated, as we said, by resisting in the presence of children. We note that there was no injury caused to any police officers. We think the Crown's conclusions are correct and it should be 2 months' imprisonment, consecutive. That would make a total of 21 months' imprisonment, each of those sentences being imposed consecutively. We have considered whether the total is too high. We think it is not and so you are sentenced in that way. On Count 1; 4 months' imprisonment, on Count 3; 15 months' imprisonment, consecutive and on Count 4; 2 months' imprisonment, consecutive, making a total of 21 months' imprisonment. 8. We come now to the restraining order which has been asked of us and in relation to that we are satisfied that it is right to make a restraining order in accordance with the Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 as amended more recently by the Telecommunications (Amendment No 3) and Crime (Miscellaneous Provisions)(Jersey) Law 2016 . We are going to deal first of all with the restraining order in relation to the defendant's ex-girlfriend. You are prohibited from having any contact, direct or indirect, with the victim, you are prohibited from entering any part of the premises known to you to be the home address of the victim or prohibited from loitering within 50 metres of the home address of the victim. You are ordered that if you come into contact with the victim in any public or private place or see her, you must take immediate action to make sure that you do not breach the order. As to the length of the restraining order, our thinking is that it should be in place for about 1 year from your date of release and we have, as it were, calculated back what that is likely to be and think therefore that the order should be in place for a period of 20 months. Any breach of the order is an offence for which you will be liable to imprisonment for up to 2 years or a fine. And I must emphasise that to you, I am sure your counsel has already but if you do breach the restraining order that itself is a criminal offence and you are liable to be sent to prison. 9. We now turn to the question of the restraining order for your former wife. We are satisfied that your former wife is in fear of you not only because of the history of previous assaults towards her which is in your record but also the assault towards your ex-girlfriend. She

says so in her victim personal statement and we see no reason to think that that is wrong. You will have to make arrangements with her in due course about the children, we completely understand that, and you will have to find a way of dealing with that and getting past any feelings that you may have that you are entitled to control either her life or what she does in relation to the children because that respect for women is something that you just have to learn. On the other hand we recognise that you have a relationship with the children and want to keep that and it should be encouraged as far as we are concerned. And so what we are going to do is we are going to make a restraining order not in the same terms that the Crown has asked for but in these terms. You are prohibited from meeting your former wife except with her consent in writing

- so you are not prohibited from telephoning her or from sending emails but you are prohibited from meeting her except with her consent which must be in writing It will enable you to make arrangements with her for the children which mutually suit you both, it deals with any question of emergencies and it is in the children's interests that you and their mother should be able to communicate with each other about their welfare. If you abuse her, then it will be up to her to take any harassment proceedings against you in a civil case which she can do and so that power that lies in her is something that you need to bear in mind in your dealings with her. You are prohibited from entering any part of the premises known to you to be her home address or of loitering within 50 metres of it. That does mean that when it comes to contact arrangements, you may have to ensure that to start with you make those contact arrangements bearing in mind that prohibition. You are prohibited from entering any part of the premises known to you to be her work address or of loitering within 50 metres of her current work address. If you see or come into contact with her in any public or private place you must take immediate action to avoid any breach of the order. If she gives her consent in writing to meet with you at a café or restaurant in order to discuss the children you will not be breaching the order so that would not affect you there but it does need her consent in writing otherwise it would be your duty to make sure that you avoid a breach of the order. The order will be in place for 20 months from today and, again, you are liable to imprisonment for up to 2 years and a fine if you breach the order. Authorities AG-v-da Silva

[2014] JRC 223 . Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008.

Telecommunications (Amendment No 3) and Crime (Miscellaneous Provisions)(Jersey) Law 2016. Harrison-v-AG

[2004] JLR 111 . AG-v-Mears

[2008] JRC 217 . Page Last Updated: 25 Apr 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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