

JERSEY / JUDGMENT

# AG v Withe [2023] JRC 123 (19 July 2023)

**[2023] JRC 123**

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

## JUDGMENT

THE DEPUTY BAILIFF: 1. On 15 June 2023, the Defendant was convicted of one count of common assault on an indictment charging him with grave and criminal assault. The case was one of domestic violence, the victim being his former partner. Upon return of the verdict, I indicated that the Defendant would be sentenced on the Crown's case unless the Defendant made an application under Article 50 of the Criminal Procedure (Jersey) Law 2018 ("the Law"). 2. The Defence duly made such an application supported by a skeleton argument dated 5 July 2023 to which the Crown replied on 12 July 2023. I have considered the summing up, the summary of evidence that I gave to the jury, my notes and recollections of the evidence and the skeleton arguments before me in reaching my conclusions. 3. Article 50 provides: "50 Sentencing where facts in dispute (1) This Article applies where a defendant found guilty is to be sentenced, and the defence disputes the facts upon which the defendant was found guilty. (2) Where this Article applies, the trial court - (a) shall, if invited by the defence or prosecution to do so; or (b) may, of its own motion, communicate its view of the facts to the sentencing court. (3) Where, under paragraph (2), the trial court has communicated its view of the facts to the sentencing court, the sentencing court may sentence the defendant on the basis of the facts so communicated. (4) In this Article - (a) "trial court" means - (i) where the defendant was tried by the Royal Court sitting with a jury, the Bailiff, or (ii) where the defendant was tried by the Inferior Number of the Royal Court sitting without a jury, the Bailiff and Jurats; (b) "sentencing court" means the Royal Court sitting as the Inferior Number or Superior number, as the case requires." 4. In AG v Williams

[2022] JRC 103 the Court considered an application under Article 50 of the Law in respect of a Defendant who had been convicted of a count of common assault in the alternative to the count of grave and criminal assault on the indictment. The Court held: "it is necessary for the judge, if there is more than one possible interpretation of the factual basis of the jury's verdict to make up their own mind to the criminal standard as to that factual basis and correspondingly, if the judge is unable to be satisfied so that they are sure of that basis to pass sentence on the interpretation most favourable to the defendant." 5. This is a case where there is more than one possible interpretation of the factual basis of the jury's verdict. Accordingly, I need to decide whether I am sure of the factual basis on which the Defendant should be sentenced - if I am not so sure, then he must be sentenced upon the interpretation of the evidence most favourable to him. 6. The jury were directed that if they accept the Complainant's evidence, they could find the Defendant guilty of grave and

criminal assault or common assault. 7. The jury was directed in the following terms: "28. In Jersey there are two kinds of assault, common assault and grave and criminal assault. The Defendant is charged with the more serious of these, grave and criminal assault. The difference between the two kinds of assault is merely a question of degree. An assault becomes a grave and criminal assault if the nature and scale of the assault is grave, i.e., serious.

29. On 17 February 2022, [the Complainant] was living for much of the time in a house occupied by the Defendant and his mother. [The Complainant] worked at the [Place A] and was due to begin her shift at 2.00 pm. At about 12.30 pm she got up and had a shower. She saw the Defendant had been using her shower products. He was not working and she was to some extent funding him. She woke him up and asked him why he was using her products. She packed her bag to go home to her mother's house. The Defendant did not want this and as she attempted to leave for work with her bag, shoes and coat on, the Defendant prevented her from leaving the house. Thereafter he assaulted her. The assault was unprovoked and included the Defendant sitting on [the Complainant], pushing her so that she fell down the stairs and when she went to the spare room on the first floor, she emerged to see that the Defendant had a knife in his waistband and he, in order to stop her leaving the premises, placed one hand on her neck and one hand on her mouth and put her to the floor, sitting on her stomach.
30. I will summarise her account in greater detail when I summarise the evidence. If you accept [the Complainant's] account you will no doubt convict the Defendant of grave and criminal assault or the alternative offence of common assault." 8. The Defence accept that the Defendant's plea of self-defence must have been rejected by the jury in order for them to have convicted him of common assault. It is submitted with some force that the injuries sustained by the Complainant, bruising, were more consistent with an offence of common assault. It is submitted on behalf of the Defendant that the jury's verdict means that they were not sure: (i) that the Complainant was subjected to a sustained and violent ordeal; (ii) that there was a knife; (iii) that there was strangulation; and (iv) that the Complainant was repeatedly pushed and pulled up and down the stairs. 9. The Crown responds to these submissions by observing that a conviction for common assault is a conviction for an offence of violence and there is no rule that the sustained nature of an assault means that the offence must be a grave and criminal assault and not a common assault - indeed, in *AG v Williams* there was a sustained assault yet the jury's verdict was guilty of common assault. 10. As to the presence of the knife, it was not the Crown's case the Defendant made threats with the knife or he used it as a weapon and the jury was not directed that the mere presence of a knife was of such seriousness that the only verdict open to them, if they accepted its presence, was a verdict of guilty of grave and criminal assault. 11. The Crown also argues that an offence which included strangulation or pushing and pulling a victim up and down stairs may amount to an offence of common assault or grave and criminal assault, depending on the circumstances. 12. I have reviewed the evidence in this case in particular the background of domestic abuse and violence referred to in the summary of the evidence

read to the jury at paragraphs 7 to 12 inclusive and paragraph 15. Having heard the evidence of the case, I am sure that this important background evidence was accepted by the jury and the Defendant should be sentenced on that basis. 13. As to the events that took place on 17 February 2022 which gave rise to the count on the indictment, having reviewed the evidence including the more or less contemporaneous complaint the victim made to a wholly independent witness, namely her employer at work, and the terms in which that complaint was given (summarised at paragraph 41 of the summary of the evidence read to the jury) I am satisfied that the Defendant should be sentenced on the basis of the account that the Complainant gave as relied upon by the Crown. There is one exception to this. The evidence in relation to the presence of the knife, notwithstanding the fact that it was referred to by the Complainant during the contemporaneous tape recording, was equivocal in that on any view, the Defendant never threatened with or referred to the knife and there was conflicting evidence in relation to the circumstances in which the knife came to be returned to the kitchen, if indeed that is what occurred. 14. Without wishing to derogate from the confidence I have in the Complainant's overall account, having regard to the evidence as a whole and the verdict of the jury, the Defendant should be sentenced on the prosecution evidence, as summarised in the summary of the evidence which I gave the jury, absent reference to the knife. Accordingly, the Defendant should be sentenced on the Crown's basis but without reference to the knife. I am satisfied so that I am sure that is the correct way to proceed in this case. Authorities Criminal Procedure (Jersey) Law 2018. AG v Williams

[2022] JRC 103 Page Last Updated: 10 Aug 2023 Back to top About JLJB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001-20262023 (External) BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2023/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-withe-2023-jrc-123-19-july-2023>

Prepared on 23 October 2026 · Esheria