

JERSEY / JUDGMENT

Fitzpatrick v AG [2005] JRC 020A (25 February 2005)

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JUDGMENT

THE bailiff: 1. On 3rd December 2004 the Court allowed an appeal by Karl Fitzpatrick against a sentence of two months' imprisonment for an offence of attempting to pervert the course of justice, substituted a sentence of 120 hours of Community Service, and stated that it would give its reasons at a later date. This we now proceed to do. 2. The facts are straightforward. The appellant was in licensed premises on 25th April 2004 when it appears that a drink was thrown at him or spilled over him. He was wearing an expensive suit at the time. He reacted aggressively, and punched the man whom he believed to be responsible, causing an injury above the eye which required five stitches to be inserted. For this grave and criminal assault the appellant was fined £300 or 15 days imprisonment, against which sentence he did not appeal. 3. Unfortunately the matter was complicated by lies which the appellant procured another man, Stephen Locke, to tell to the police. In a nutshell he persuaded Locke to tell the police a false story which minimised the appellant's involvement in the assault. Eventually this dishonesty came to light, and both the appellant and Locke were charged with an attempt to pervert the cause of justice. 4. Both men were presented before the Magistrate on 24th June 2004 in connection with this alleged offence. They reserved their pleas and the case was remanded to 8th July 2004. On 7th July Locke appeared before Judge Christmas in relation to a breach of bail condition. Bail was renewed but, during the course of the hearing, the Magistrate was informed by the prosecution that it was intended to call Locke as a witness for the Crown if the appellant pleaded not guilty to the charge. The prosecution therefore intended to deal with the two cases separately. 5. On 8th July the appellant again appeared before the Magistrate and the case was remanded to 29th July so that jurisdiction could be considered. The prosecution informed the Magistrate of its intention to proceed against the two men separately. The appellant continued to reserve his plea. 6. On 21st July Locke appeared before Judge Christmas and was further remanded to 18th August. On 22nd July the appellant appeared before the Magistrate in relation to his bail conditions, and was remanded to 29th July. On 29th July the appellant appeared before Judge Tricot, but no decision was made on jurisdiction, and he was further remanded to 12th August. 7. On 12th August the appellant appeared before the Magistrate who declined to commit the case to the Royal Court, and further remanded the case to 30th September. 8. On 18th August Locke appeared before Judge Christmas. The facts were heard and Locke was sentenced to 90 hours of community

service. On 30th September the appellant appeared before Judge Christmas, pleaded guilty and was remanded to 28th October for the preparation of background reports. 9. On 28th October the appellant appeared before Judge Tricot, the facts were outlined and counsel addressed the Court in mitigation. The Relief Magistrate asked whether counsel could distinguish between the case of the appellant and AG v Lenton and Fannon (10th July, 1992) Jersey Unreported; [1992/123]. Counsel told the Relief Magistrate that she was not aware of that case, but would be prepared to address him on it if the case against the appellant could be adjourned for a few minutes. Counsel did not however press the Relief Magistrate nor apply formally for a short adjournment. The Relief Magistrate retired to consider the matter and subsequently sentenced the appellant to two months' imprisonment, referring in his sentencing remarks to the case of Lenton and Fannon . 10. At the hearing before us, counsel for the appellant relied upon two points. First she submitted that there had been procedural irregularities. Secondly, she submitted that there was undue disparity between the sentences imposed upon the appellant and upon Locke for what was essentially the same offence. 11. We do not think that there were any serious procedural irregularities. In particular we do not consider that the failure to adjourn so as to give defence counsel the opportunity to consider the case of Lanton and Fannon can be reasonably criticised. The appellant was represented by experienced counsel who did not think it appropriate, for reason which may well have been sensible, to apply for an adjournment. Judge Tricot conducted the hearing with complete fairness. 12. The second submission in relation to disparity was however the matter which troubled the Court. Given that both the appellant and Locke eventually pleaded guilty to the charge of attempting to pervert the course of justice, it would have been desirable for them to have been sentenced together by the same judge. That they were not dealt with together not the fault of the Relief Magistrate but was the unfortunate consequence of the way in which the process unfolded. We do not know whether a magistrate, considering the respective culpability of the two young men involved in what was a serious offence, would inevitably have concluded that community service was right for one, but prison was right for the other. With some hesitation, and primarily as an act of mercy, the Court allowed the appeal and substituted a sentence of 120 hours community service for the short prison sentence imposed by the Relief Magistrate. Authorities AG v Lenton and Fannon (10th July, 1992) Jersey Unreported; [1992/123]. Page Last Updated: 18 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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