

JERSEY / JUDGMENT

Holden v AG [2003] JCA 017 (20 January 2003)

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JUDGMENT

THE BAILIFF: 1. This is an application by Mark Holden for leave to appeal against a sentence of 3 years' imprisonment imposed for an offence of manslaughter. The facts can be summarised as follows. The applicant and the deceased were men of similar age and background but were unknown to each other. At the time of the offence in the early hours of the 25 th May, 2002, both men were very drunk. Within the preceding hour or so there had been short verbal exchanges between them at a night club. 2. The applicant had felt threatened by the victim and his companion a man named Deehan . These men, the applicant said, had spoken unpleasantly to him. The applicant had gone back to the lodging house in which he had a room, and at the entrance had seen the deceased apparently trying to gain admittance with Deehan . 3. The applicant approached the deceased. There was some pushing or shoving between them and as a result the deceased tumbled down the short flight of external steps which separated the entrance to the lodging house from the pavement below. There was an independent witness, who stated that the applicant pushed the deceased but the Court below treated the matter as being not significant. 4. The deceased got up and walked away. The applicant descended the steps and went after him despite an attempt by friends to dissuade him from doing so. Words were spoken on both sides and after some finger pointing, the applicant suddenly delivered a punch with moderate force to the face of the deceased. We say 'moderate force', but the deceased had not been expecting aggression and the punch was of sufficient force to knock him backwards off his feet. His skull struck the pavement and was fractured. He did not move. The applicant left the scene. The deceased was taken to hospital where he died some 30 or so hours later without having regained full consciousness. 5. After a difficult police investigation the applicant was arrested on the 27 th May. In accordance with his legal rights he did not answer substantive questions at an interview and refused to participate in an identification parade. He did, however, plead guilty to the charge on the second occasion upon which he appeared before the Magistrate's Court. 6. Mr Gollop, who presented the applicant's case with his customary thoroughness, submitted that the Inferior Number has misunderstood, or misinterpreted the English authorities placed before it; and in particular the case of R-v- Coleman (1992) CR. App. R . (S), and that the sentence of 3 years' imprisonment was manifestly excessive. 7. This was the first occasion upon which a case of single-punch manslaughter had come before the Court; and it is

understandable why considerable attention was devoted, both by counsel and by the Court below, to the approach of English Courts to this kind of offence. We hope that in future the observations of this Court will be the guideline for prosecuting authorities and indeed for sentencing courts. 8. Counsel for the applicant placed considerable reliance upon the decision of the English Court of Appeal in *Coleman*. The facts of *Coleman* were not too dissimilar to the facts of this case and were summarised in the head note to the report in this way: "The appellant pleaded guilty to manslaughter. The appellant was walking home one night with his cohabitee, when he encountered two men who were shouting abuse and obscenities, although not directed at the appellant. The appellant confronted the two men, and punched each of them once in the face. Both fell to the ground; one of them tripped over a kerbstone, fell backwards, fractured his skull and died shortly afterwards. The appellant admitted that he had struck the blow to police who arrived at the scene of the incident. Sentenced to two years' imprisonment." 9. Lord Lane, CJ described the type of case in his judgment as follows: "It should be noted at the outset that this is the circumstance which we have to examine: where a person receives a blow, probably one blow only, to the head or face, is knocked over by the blow and unfortunately cracks his head on the floor or the pavement, suffers a fractured skull and dies. It is to be distinguished sharply from the sort of case where a victim on the ground is kicked about the head. It is to be distinguished sharply from the sort of case where a weapon is used in order to inflict injury. It is further to be distinguished from where the actual blow itself inflicts the injury which causes the death. This is the case of a fall almost accidentally resulting in a fractured skull". 10. The Court went on to state that the starting point in that type of case was one of 12 months' imprisonment. It is to be noted, however, that the term "starting point" is not used in the sense that it is employed in this jurisdiction. The Lord Chief Justice intended that the sentence could move up or down from the starting point depending on aggravating or mitigating circumstances. *Coleman's* appeal was, however, allowed and a sentence of 12 months' imprisonment substituted. 11. A number of other English cases were cited both before us and in the Court below. We do not think that it is necessary to refer to them in any detail. In our judgment, there is little doubt that in England attitudes have been hardening since the judgment in *R-v-Coleman* for the reasons expressed by Hirst LJ in *R-v-Crimp*

[1995] 16 Cr. App. R(S) when the learned Lord Justice stated: "The public does cherish the sanctity of human life and when, as here, violence, albeit unintendedly, results in the death of the victim, the public sees the offence in an entirely different light from one where a non-fatal injury ensues. We, as judges, sit here as representatives of the public, and it would be quite wrong for us to disregard that thoroughly understandable attitude". 12. That statement may be thought to have an echo in the judgment of the Royal Court in *A. G. -v- Hall* (2 nd May, 1995) Jersey Unreported where the Court warned that sentences for motor-manslaughter had been too low and would be increased. It is clear, as contended by the Crown Advocate, that in England, notwithstanding *R-v-Coleman*, sentences for single-punch-manslaughter have often been significantly higher than 12 months' imprisonment. 13. As a matter of general principle we cannot ignore the growing public disquiet at violent attacks upon others particularly in public places. Where that violence results in the

death of the victim the sentence must reflect the lethal result of the attack. The death is not accidental; it is the direct result of the unlawful application of violence. The sudden extinction of a life with all the associated trauma and grief that is suffered by the family and friends of the victim cannot be viewed lightly by the courts. 14. Clearly much will depend upon the nature of the violence and all the other circumstances of the case. In our judgment, however, the starting point in a Jersey sense for single punch manslaughter of this kind is between 5 and 6 years' imprisonment. For the avoidance of doubt, that is without consideration of any mitigating factors. 15. Counsel for the applicant has urged upon us a number of mitigating circumstances that in his submission were not given sufficient weight by the sentencing Court. He mentioned the applicant's good character, and the fact that he had pleaded guilty to the indictment. He mentioned the applicant's remorse; the fact that this was not premeditated violence, and that the blow was a single blow which was forceful but not savage. Counsel also mentioned the provocation offered by the deceased, who for some reason went round to the lodging-house, notwithstanding the exchanges that had taken place earlier in the evening at the night club. It is possible to put a different and less favourable construction on some of these mitigating factors. Nonetheless, we accept that the applicant is in general a man of good character who is now full of remorse about what happened on that fateful evening. 16. We are sitting as a Court of Appeal and we remind ourselves that our task is not to substitute our own view of the appropriate sentence for this offence. Our duty is to determine whether the sentence of 3 years' imprisonment is manifestly excessive, or wrong in principle. In our judgment all the aggravating and mitigating circumstances were taken fully into account by the Court below, and we find ourselves in full agreement with the Deputy Bailiff's assessment of the balancing exercise performed by the sentencing court. 17. Some members of this Court would have inclined to the view that the Crown Advocate's conclusions of 4 years' imprisonment were not far off the mark, but we are quite clear that the sentence of 3 years' imprisonment imposed in the Court below could not in anyway be described as manifestly excessive. The application is accordingly refused. *Authorities R -v- Coleman* (1992) 13 Cr. App. R. (S) 508. *Bamborough*

(1995) 16 Cr. App. R. (S) 602. *Hamar*

(2001) 2 Cr. App. R. (S) 295. *A. G. -v- O'Brien* (20 th November, 1995) Jersey Unreported. *Phillips* (1985) 7 Cr. App. R. (S) 235. *Edwards* (1990) 12 Cr. App. R. (S) 199. *Scammell*

(2002) 1 Cr. App. R. (S) 293. *A. G.'s Reference No. 100/2001* (Welch) 2 Cr. App. R. (S) 365. *R-v- Crimp* [1995] 16 Cr. App. R. (S). *A. G. -v- Hall* (2 nd May, 1995) Jersey Unreported. Page Last Updated: 03 Mar 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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