

JERSEY / JUDGMENT

Petriella -v- AG [2013]

JRC 163 (20 August 2013)

[2013] JRC 163

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JUDGMENT

THE BAILIFF: 1. In this case the appellant appeals against the aggregate sentences of 12 months' imprisonment and a recommendation for deportation imposed in the Magistrate's Court (Advocate Falle, Relief Magistrate) on 20 th May, 2013. Although the notice of appeal is concerned only with an appeal against sentence, the appellant wrote two letters shortly before the hearing indicating that he wished to re-open an appeal against conviction in respect of an assault on PC Manners. That appeal had been dismissed by this Court for the reasons set out in a judgment dated 14 th March,

[2013] JRC 057 ("the March Judgment"). The Court has previously announced its decision to dismiss this appeal and now gives its reasons. 2. The recent decision of Syvret-v-AG

[2012] JLR 132 held that there is jurisdiction in this Court to re-open an appeal from the Magistrate's Court which has been dismissed. However, the judgment of Pitchers, Commissioner makes clear that this is a wholly exceptional course which will only be permitted where there is a real danger that an injustice has occurred. 3. Given that the appellant was unrepresented - although the Court had the benefit of Advocate Tremoceiro as amicus - we decided to allow the appellant to make his application to re-open the appeal against conviction notwithstanding that the notice of appeal referred only to an appeal against sentence and that no formal written application had been made other than the two letters referred to. We shall deal with this aspect first. Application to re-open appeal against conviction for assault 4. The factual background is described in detail in the March judgment. In broad outline, the prosecution case was that, following his arrest for urinating in Don Street in the early hours of Friday, 1 st June, 2012, the appellant head-butted PC Manners near the back of the police van which was to take the appellant back to the Police Station. 5. The Relief Magistrate (Advocate P Harris) saw CCTV evidence of the scene in Don Street and this showed the events leading up to the alleged incident, but the rear of the police van was not visible on CCTV and accordingly it provided no direct evidence about the alleged assault. The prosecution essentially relied upon the CCTV evidence and the evidence of three police officers, PC Manners, PC Sturgeon and PC Jagodka. The defence relied upon evidence from the defendant and a friend who had been

present at the time of the arrest, although, as the March judgment showed, the evidence of the friend did not in fact assist the defendant. 6. The circumstances leading up to the assault were that PC Manners was on patrol and was asked by the Control Room to attend in Don Street. There he saw the appellant urinating against a wall. He arrested him and asked the Control Room for transport. He said the appellant was under the influence of alcohol and he estimated him to be at 7 on a scale of 1-10. After a while PC Sturgeon arrived and the appellant was handcuffed with his hands behind him. 7. In due course the police van arrived, driven by PC Jagodka. PC Sturgeon and PC Manners walked the appellant across to the rear of the police van. According to PC Manners, he decided to remove a pin badge the appellant was wearing on his clothing. He had to move close to the appellant to do this and, as he was doing so, the appellant head-butted PC Manners hitting him on the forehead. It caused the officer to reel backwards. The officer said that he then immediately moved forward and struck the appellant to the face with a closed fist in order to protect himself and other officers from further assault. 8. PC Sturgeon and PC Jagodka both gave evidence that the appellant had head-butted PC Manners at the rear of the van, although they differed as to what PC Manners did to the appellant immediately after the head-butt. PC Sturgeon said she was uncertain whether it was a push or a punch whereas PC Jagodka maintained that it was a push. 9. The appellant was taken back to Police Headquarters. PC Jagodka said that when they arrived at the Police Station the appellant was verbally aggressive when he was presented before the custody sergeant. 10. The appellant gave evidence before the Magistrate's Court that any contact between his head and the head of PC Manners was accidental and he had had no intention of head-butting the police officer. 11. There was a lengthy discussion in the Magistrate's Court about the CCTV evidence and possible different versions. At the conclusion of the hearing, the Magistrate said that he had some sympathy with the appellant's concern about the quality of the management of the CCTV evidence and about PC Manners punching him. However, he concluded that the evidence of the three police officers was overwhelming and accordingly he found the appellant guilty of the assault on PC Manners. 12. As already mentioned, the appellant appealed against that conviction. At the hearing of the appeal before this Court, he was represented by Advocate Gollop. The main ground of appeal was that the CCTV footage of the arrival of the appellant at the Police Station and his subsequent attendance in the custody suite (together "the custody suite footage") was not shown to the Relief Magistrate because the legal adviser appearing for the prosecution had represented several times to the Relief Magistrate that it was not relevant. Advocate Gollop asserted that it was relevant for the following reasons:- (i) The footage showed that the pin badge had been removed by the police in Don Street and this was contrary to the evidence of all three police officers at trial. (ii) The footage showed that the appellant exiting the van at the Police Station unaided and walking upright to the custody suite and this was contrary to the evidence of PC Manners. (iii) The footage showed that the appellant did not push any officers at Police Headquarters and had made "no attempt to resist and get away" and this was contrary to what was said by PC Jagodka. In effect Advocate Gollop submitted that, if the Relief Magistrate had seen the custody suite footage, it would have undermined

the credibility of the police officers, which was key to the prosecution case. 13. In the light of those submissions, the Court hearing the original appeal watched the custody suite footage. Having done so, it concluded (for the reasons set out in paragraphs 23-33 of the March judgment) that the custody suite footage could not in any circumstances have affected the Relief Magistrate's decision and accordingly the fact that it was not viewed by him was not a material irregularity and did not amount to a ground for quashing the conviction. 14. Advocate Gollop made various other submissions on behalf of the appellant going to the issue of whether the Relief Magistrate should have accepted the evidence of the police officers but the Court concluded that none of these points, whether taken individually or cumulatively, gave any reason for concluding that there was not ample evidence upon which the Magistrate could properly find the appellant guilty. The Court accordingly dismissed the appeal against conviction. 15. The Court did point out that, after Advocate Gollop had addressed the Court on the hearing of the appeal, the appellant said that he disagreed with his advocate and wanted to make additional points. The Court allowed him to do so but concluded that they were unarguable. (See paras. 37-39 of the March judgment). 16. The appellant now seeks to re-open his appeal against conviction. In his submissions to us, the appellant held up a number of discs and said that these included two versions of the custody suite footage whereas the Court had only seen one version at the hearing of the original appeal. He said that there were differences and the Court should see both. Furthermore, he said, there were a number of additional points which Advocate Gollop had not made and which he wished to make. In the circumstances we decided to watch both discs to which the appellant was referring. The Court adjourned overnight so that arrangements could be made for viewing equipment to be installed in court. 17. The following morning, the appellant admitted to us that he had been mistaken the previous day and that he did not in fact have two different versions of the custody suite footage; there was only one version and this was the version which the Court had seen previously. However, he wished it to be shown because, at the original hearing of the appeal, the Court had only seen footage of the appellant's arrival in the police van and the custody suite. He wished the Court also to see CCTV footage of what happened when he was taken from the custody suite to the cells. We agreed to watch this footage. 18. The footage is divided into five sections. The first shows the arrival of the appellant at the Police Station and the second shows his attendance in the custody suite. This was the same footage as the Court had seen at the original hearing of the appeal against conviction. As the Court said in the March judgment, there is no sound but it is quite clear that, in the custody suite, the appellant had much to say and did not appear to be very happy with the situation. It does however show that he was able to walk unaided and did not stagger. It also shows that, whilst in the custody suite, he pushes towards the woman police officer in the custody suite and is restrained by PC Jagodka as he does so. 19. The Court then saw three further sections of CCTV which had not been shown at the original appeal. It is clear that, following the incident in the custody suite, the appellant was taken to the cells. His hands are handcuffed behind him and he is made to walk with the upper part of his body facing down. He was walked through a corridor, then through an exercise yard and then to

the cells. As it happens, the order in which we were shown the CCTV was his arrival in the cell first, then his being walked through the corridor and finally his being walked through the exercise yard. 20. The appellant made essentially four points in connection with the CCTV evidence:- (i) The footage, particularly that showing his arrival and detention in the custody suite, shows that he was not drunk, contrary to what the police officers said about his state in Don Street. (ii) The footage in the custody suite showed that he did not try and head-butt the WPC, contrary to what PC Jagodka had said in his witness statement. (iii) PC Manners had said that he had punched the appellant causing the appellant to have a black eye whereas the CCTV showed that he did not have a black eye. (iv) The footage showed that, whilst being taken to the cells, his head was deliberately banged against the wall by the police. 21. We shall take each of these points in turn:- (i) This is not a new point. It was made by Advocate Gollop at the original hearing of the appeal and was dealt with at paragraph 28 of the March judgment. The Court accepted that the custody suite footage showed that the appellant was able to walk unaided and did not stagger, but the Court concluded that the evidence could not possibly have made any difference to the Relief Magistrate's decision. He had had the advantage of seeing the CCTV in relation to Don Street and could assess for himself the relationship between what he saw on that CCTV as to the appellant's condition and the evidence given to him by the police officers on that topic. (ii) This also is not a new point. It was raised at the hearing of the original appeal and was dealt with at paragraphs 31 and 32 of the March

judgment.

(iii) According to the appellant, PC Manners said that he punched the appellant causing the appellant to have a black eye. He submitted that the CCTV footage at the Police Station showed that he did not have a black eye. It therefore cast doubt on the evidence of PC Manners. We were not referred to any passage in the transcript of the evidence before the Magistrate's Court where it is said that PC Manners asserted that he had caused the appellant to have a black eye. We have been through the transcript and none of the police officers gave any evidence that the appellant had suffered a black eye. In the circumstances we do not see that this footage (which we accept does not show the appellant as having a black eye) assists the appellant. (iv) As to this point, the Court was shown the CCTV evidence in an order different from that in which it occurred at the time. After seeing the arrival and custody suite footage, we were shown next the placing of the appellant in the cell. The appellant asserted to us that this footage showed that he was pushed by the police so that his head banged against the wall. We have to say that the Court is quite satisfied that the footage shows nothing of the sort. It shows the appellant being taken towards the cell door and then through the cell door, but nothing more. We were shown next the footage of the corridor and the appellant then said that he had been mistaken and that this was where his head was banged by the police. He said that you could see it on the footage. Again, we have to disagree. It is certainly true that, when the appellant and the two police officers first come into view, there appears to be a false step, in that the three of them appear to go straight on and then reverse and turn to their right so as to come down the corridor towards the camera. However there is nothing

in the footage which lends support to an allegation that this was a banging of the appellant's head against a wall. Finally we were shown the footage in the exercise yard and this simply shows the appellant being walked through the yard by the two police officers with his hands behind him and his head down. 22. Accordingly we find that the CCTV footage which we have reviewed does not support the appellant and comes nowhere near meeting the test for re-opening an appeal as laid down in *Syvret*. For these reasons we refused the application to re-open the appeal against conviction. Appeal against sentence 23. The appellant was sentenced on 20 th May, 2013, in respect of the following offences:- (i) Assault on 1 st June, 2012, on PC Manners in the execution of his duty - 4 months' imprisonment. (ii) Assault on 1 st June, 2012, on PC Carvalho in the execution of his duty - 2 months' imprisonment, consecutive. (iii) Harassment contrary to Article 3(1) Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008 on 18 th September, 2012, - 3 months' imprisonment, consecutive. (iv) On 6 th September, 2012, driving without due care and attention contrary to Article 25 Road Traffic (Jersey) Law 1956

- fined £500 or 6 weeks' imprisonment in default. (v) Contempt of court on 21 st March, 2013, - 3 month's imprisonment, consecutive. The appellant also appeared before the Magistrate's Court on that occasion for an offence of urinating in the street but no separate penalty was imposed. The appellant was also in breach of a binding over order but no further penalty was imposed and that order was left in place. The upshot was that the appellant was sentenced to a total of 12 months' imprisonment. The Relief Magistrate also recommended his deportation. The facts of the offences 24. We have already described the circumstances of the assault on PC Manners. This took place at approximately 2am on 1 st June, 2012. The officer had arrested the appellant for urinating in the street. The appellant was under the influence of drink. As he was being placed in the police van to take him to the Police Station, the appellant head-butted the officer. Fortunately it caused no injury. The appellant pleaded not guilty to the offence but was convicted by Advocate Harris, Relief Magistrate, on 7 th September, 2012. As already mentioned, his appeal against conviction to this Court was dismissed for the reasons given in the March Judgment. 25. The assault on PC Carvalho occurred later the same morning. The appellant was in the cell at the Magistrate's Court and at approximately 12:15 two officers attempted to take him from his cell to the court room. PC Carvalho was not in fact one of those conducting the operation but he was watching as his colleagues removed the appellant from the cell. As he was removed the appellant looked at PC Carvalho and spat at him. It appears that the spit did not land. He was restrained by the other two officers and taken to the Court room. Later, PC Carvalho was driving the appellant to the prison and the appellant started shouting abuse at the officer shouting " paki " at him and including " you piece of shit, you paki, yes, you driving, I'm going to stab you next time I see you on the street. " The appellant pleaded not guilty but was convicted. 26. The harassment charge arose out of proceedings for contact between the appellant and his daughter. The social worker from the Children's Service who was involved in the case was Sarah Jenner. She had given her mobile number to the appellant so that he could contact her if necessary in connection with the matter. It appears that the Royal Court circulated a draft judgment on 5 th September, 2012, indicating that the Court would be reducing the

appellant's contact with his daughter to once a month. On 17 th September the appellant attended a contact session with his daughter and Miss Jenner informed him that his contact was being reduced to once a month. It appears that the appellant reacted badly to this and sent a number of text messages to Miss Jenner's mobile phone which formed the basis of the harassment charge. One said:- " Making a protest is perfectly legal. Your name and the Court will be all over my banners and on Facebook this Monday. Be ready to take a lot of shame, regard. The shit I will give you on Monday have no end. I make banners with your name and I use Facebook. I no made no discount. Even the Royal Court will pay for this. You ready for my shit?" 27. On 18 th September he attended at the Le Bas Centre and left a letter for Miss Jenner which amongst other things said that " I will raise up my banners and I will give you a lot of problem. May you lose your job" and "are you ready for my shit? Good luck ". 28. In her witness statement Miss Jenner said:- "I am frightened by the constant threats and threatening and intimidating behaviour carried out by Petriella. I am trying to do my job to the best of my ability, but it is difficult when I am undermined and threatened. He is extremely volatile and unpredictable and I believe his threats to be genuine. I am genuinely afraid. I check the car park before going out to the car and I make sure the doors at home are locked at night. I wouldn't go anywhere alone at night for fear of him following me. I am not usually a nervous person. I am very confident and don't feel I should have to live like this just for doing my job." 29. The appellant pleaded not guilty to the charge of harassment so that Miss Jenner was forced to give evidence. He was convicted after a trial on 23 rd November, 2012. 30. The offence of driving without due care and attention was originally charged as dangerous driving but the appellant pleaded guilty when it was reduced to the lesser charge. The events took place on 6 th September, 2012. It appears that the appellant was driving a Toyota which pulled out from one of the side streets in Gloucester Street causing a car to swerve out of the way. Later, travelling along Victoria Avenue, the appellant swerved between the lanes overtaking and undertaking several vehicles along the way and causing at least one of them to hoot as he was so close to that vehicle. A witness estimated he was travelling at about 60 mph. When he got to the bottom of Beaumont Hill, he went straight through the filter in turn without stopping, causing a blue Land Rover to break hard, so much so that the witness thought they had actually touched. At the top of the hill by the roundabout, the appellant shot off in front of two cars which were turning right to go to the Airport from the St Peter's direction causing them to brake hard. 31. The contempt of court charge arises out of events on 21 st March, 2013. This Court has seen the transcript of those proceedings. Suffice it to say that the appellant's conduct was very disruptive and disrespectful. He frequently interrupted and shouted at the Relief Magistrate. Eventually the Relief Magistrate had to order that the appellant be taken down to the cells. When he was brought back after a period to cool off, he continued to shout and interrupt. He was warned by the Relief Magistrate that he was putting himself in danger of a charge of contempt of court but this does not appear to have had the desired effect. The hearing ended with the defendant telling the Relief Magistrate " you are a mad man ". The Appellant's background 32. The Magistrate's Court ordered the preparation of psychiatric and psychological reports but these were not produced as the appellant refused to co-

operate. Nevertheless, such reports had been prepared in relation to the proceedings for contact with his daughter referred to earlier and the Royal Court ordered the release of these to the Magistrate's Court. Accordingly, the Relief Magistrate had access to these reports as well as to the usual Social Enquiry Report at the time of passing sentence on 20th May. 33. The appellant was born in Milan and is now 41. He developed a heroin addiction and became involved in crime in Italy. His offences there include minor offences of a public nuisance nature e.g. threatening behaviour (1994 and 2004), verbal assault on police (1994 and

1998) as well as more serious offences of extortion (2004), violence against a person (2004), bodily harm (2004) affray (1990), robbery (1993) and several burglaries (1993). It appears he has served several periods of imprisonment in Italy, most of them being of short duration. 34. Following a move to the United Kingdom in about 2002, he appeared before the Milton Keynes Magistrate's Court on four occasions for some eight offences including possession of a class A drug, criminal damage, public order offences, battery and assaulting a police officer. He appears to have appealed most of these to the Crown Court but all his appeals were dismissed. In England, he met a woman from Jersey with whom he has a daughter who is now 2 years old. They moved to Jersey in May 2010 but the daughter has since been taken into care as her mother is unable to look after her. As mentioned earlier, the appellant's contact has been reduced to once a month and there has been none since he was arrested and remanded in custody in January 2013. Since coming to Jersey he has appeared in the Magistrate's Court on two occasions for public order offences including breach of the peace by fighting, refusing to obey the lawful orders of a police officer and drunk and disorderly. He has been attending the Alcohol and Drug Service since November 2011 and has been treated during this period for both alcohol and drugs misuse. 35. The appellant has been diagnosed by the psychiatrist Dr Harrison as suffering from Persistent Delusional Disorder. In particular, he has told the probation officer, the psychiatrist and the psychologist that he is engaged in a "game show" put forward by EU governments. It began when he saw a number on a TV screen and called this number. It is a game somewhat akin to "the Truman Show" from the film. He was told that the "game show" would last for 10 years ending in 2013. He has apparently had no contact with the "game show organisers" since then but as a consequence he believes everything that has happened to him in his life since entering the show has been planned and observed. He is convinced all the hardships he faces are being observed by others in authority to see how, as a prisoner, he copes with adversity and setbacks. He feels he will need to be back in Italy for the game to end. The appellant's contentions 36. The appellant was assisted by Advocate Tremoceiro as amicus in developing the arguments which he wished to put forward. We would like to place on record our appreciation for the assistance which Advocate Tremoceiro has given in this case, both in the Magistrate's Court and in this Court. He has not only assisted the Court but he was also a great help to the appellant, even if the appellant did not always appreciate it. 37. The appellant submits first that the sentences for the assaults on PC Manners and PC Carvalho should have been concurrent rather than

consecutive. He submits that they all arose out of his arrest for urinating in the street and should be treated as one continuing set of offending. 38. We disagree. The assault on PC Manners took place at approximately 2am following the appellant's arrest in Don Street. The assault on PC Carvalho took place some 10 hours later at about 12:15pm in the environs of the Magistrate's Court. We can see no connection between the two. They were separate assaults and deserve to be dealt with by way of consecutive sentences. 39. We have also considered whether the sentences, either individually or together, are excessive. We think not. The assault on PC Manners was a head-butt which can have potentially serious consequences in terms of a broken nose etc. Although no material injury was caused in this case, that does not detract from the serious nature of such an assault. Furthermore, the appellant did not have the benefit of a guilty plea. In the circumstances, we cannot regard a sentence of 4 months' imprisonment as manifestly excessive. In AG-v-Capitano

[2013] JRC 084 the defendant was sentenced for a number of assaults. One of these was spitting at a police officer for which the Crown moved for a sentence of 4 months. The Court held that the right sentence was one of 6 months and that it should be consecutive in order to mark the need to protect the police. In passing, William Bailhache DB said this at paragraph 1:- "The spitting offences are particularly disgusting offences and, certainly these days, they carry the risk of serious infection being transmitted and are potentially very serious indeed. One of the spitting offences was against a police officer and the other against an ambulance driver. In both cases these were men who were doing their jobs serving the public and the Court has said, on many occasions, that police officers and ambulance drivers are entitled to the Court's protection." In the circumstances, we cannot regard a sentence of 2 months' imprisonment for the assault on PC Carvalho as anything other than entirely justified. 40. In relation to the charge of driving without due care and attention, the appellant contends that the Relief Magistrate imposed the maximum sentence and therefore gave no credit for a guilty plea. We can understand why the appellant might have thought that because, when passing sentence, the Relief Magistrate said this:- "the facts support the conclusion that you should be treated in relation to that ... to the maximum that I can impose for careless driving, and you will, therefore, be disqualified from driving for 6 months and you will have to re-take your test. You will be fined £500 and, in lieu of payment, 6 weeks' imprisonment. You have 6 months in which to pay and that 6 months will run from the period of your release from custody." (emphasis added). 41. In fact, the maximum fine for an offence of driving without due care and attention is £1,000. It is clear therefore that the Relief Magistrate was not imposing the maximum possible sentence. What he was no doubt referring to was that the Magistrate's Court Sentencing Guidelines divide offences of driving without due care and attention into three categories, namely "minor offences", "average offences", and "serious offences". The recommended fine for the category of "serious offence" for a first offender is £300 - £500. All of the recommended figures in the guidelines are based on a guilty plea. It is clear therefore that the Relief Magistrate was intending to impose the maximum for a first offender who committed a "serious" offence of driving without due care and attention and

pleaded guilty. We have no doubt that the Relief Magistrate was correct to categorise this particular offending as at the "upper range of careless driving" and was therefore perfectly entitled to conclude that a fine of £500 was appropriate. His sentence was entirely consistent with the guidelines. We therefore see no grounds upon which to interfere with the sentence. 42. Turning to the offence of harassment, the appellant submits that the sentence of 3 months' imprisonment was excessive. He says that he did not threaten Miss Jenner with violence and this is his first such offence. He says that he tried to call Miss Jenner but his calls were not answered, so he sent the text messages and left the message at her office. Those messages refer to a "peaceful protest". The maximum sentence under the statute is 6 months' imprisonment and he contends that a sentence of 3 months for this offence was therefore manifestly excessive. He also pointed out that the Relief Magistrate incorrectly referred in his sentencing remarks to "the approaches to the house", which suggested that he was passing sentence on an erroneous factual basis. 43. We agree that, based on the summary of facts given by the prosecution's legal adviser prior to sentencing, the Relief Magistrate was in error in stating that the appellant had approached Miss Jenner's house. There is no evidence of that in the papers before us. However, even allowing for that error, we cannot accept that the sentence was manifestly excessive. Just as police officers are entitled to the Court's protection, so are social workers dealing with difficult matters relating to children. Inevitably tensions can run high on such occasions and it is important to show that parents cannot threaten social workers in this way. The appellant pleaded not guilty and therefore forced Miss Jenner to undergo the process of giving evidence. It is clear that she was very troubled by what had happened, as is shown from the excerpt from her statement quoted at paragraph 28 above. In all the circumstances, we consider that a sentence of 3 months was entirely justified. We also conclude that it was rightly made consecutive to the sentences for the other offences, as it was completely unrelated. 44. As to the charge of contempt of court, the appellant accepts that he was in contempt as appears from the transcript of the proceedings on 21 st March. However he submits that the sentence of 3 months' imprisonment was excessive for the following reasons:- (i) He had apologised for his conduct at the next sitting of the Magistrate's Court. We were referred to Hall-v-AG 2001/251 where the Royal Court was critical of the fact that the Assistant Magistrate had not given any opportunity to the defendant in that case to apologise before passing sentence for contempt of court. The Court on that occasion referred in passing to the observation of Lawton LJ in R-v-Moran

(1985) 81 Cr. App. R 51 CA where he said this:- "The following principle should be borne in mind. First, a decision to imprison the man for contempt of court should never be taken too quickly. The judge should give himself time for reflection as to what is the best course to take. Secondly, he should consider whether that time for reflection should not extend to a different day because overnight thoughts are sometimes better than thoughts on the spur of the moment. Thirdly, the judge should consider whether the seeming contemnor should have some advice. We do not accept the proposition which was tentatively put forward on this appeal that this contemnor had a right to legal advice. Sometimes

situations arise in court where the judge has to act quickly and to pass such sentence as he thinks appropriate at once; so there cannot be any right to legal advice. Justice does not require a contemnor in the face of the court to have a right to legal advice. But if the circumstances are such that it is possible for the contemnor to have advice he should be given an opportunity of having it. In practice what usually happens is that somebody gives the contemnor advice. He takes it, apologises to the court and that is the end of the matter. Giving a contemnor an opportunity to apologise is one of the most important aspects of this summary procedure which in many ways is draconian." The appellant argued that, given that he had apologised at the next sitting, his conduct did not require a sentence of imprisonment. (ii) The Relief Magistrate had unfairly allowed the evidence of Mr Dingle, a court usher, to be given in relation to the charge of contempt. Mr Dingle was called without warning and without production and disclosure of any witness statement in advance. The evidence of Mr Dingle was that, when the appellant was taken down to the cell mid-morning on st March because of his conduct, he said as he left the dock words to the effect " when I'm out I'm going to come and get you " or " come and see you ". The usher was not clear whether this was directed at the Magistrate or at the legal adviser appearing for the prosecution. The remark was not made in the presence of the Court and was not heard by the Relief Magistrate. It was submitted that the appellant did not have an opportunity fully to contest that evidence because he had been given no advance warning of its introduction. (iii) The appellant explained that his outbursts on st March were because of his frustration that the Court was listening to Advocate Tremoceiro rather than to him. His comments were aimed at Advocate Tremoceiro and not at the Relief Magistrate. (iv) The Relief Magistrate had, in his sentencing remarks, wrongly stated that the trial was thrown into disorder by reason of the appellant's disorderly conduct. He said:- " a number of persons had been brought as witnesses for the trial and had to be sent away because of the disorder which was created ." 45. We are satisfied that there is substance in the last two points made by the appellant. It was wrong for the usher to give evidence without any advance warning to the appellant of what he was likely to say thereby giving the appellant an opportunity to prepare his stance in relation to that evidence. Secondly, it is clear from the transcript of the hearing on 21 st March that the trial was adjourned because of a difficulty in availability of some medical evidence. Thus at page 223 of the Court bundle the Relief Magistrate is recorded as saying to Advocate Tremoceiro (who had made submissions about the matter in the absence of the appellant after the appellant had been taken down to the cells to cool off):- " I think it is a fundamental issue that you have raised, and indeed has Mr Metcalfe. I am entirely persuaded that it would be wrong, whatever the defendant has to say, to proceed today ." 46. The question then is as to what effect these errors should have on the sentence. What would be the correct sentence for the admitted contempt of court by reference to what is contained in the transcript, but ignoring the additional matter of which the usher gave evidence and the suggestion that the disorderly conduct by the appellant (for which he had to be sent to the cells) caused the adjournment of the proceedings to another day? 47. In our judgment, notwithstanding the apology, the Relief Magistrate was entitled to treat this

matter seriously. For example, in connection with the apology, we note that, despite the apology, the appellant continued to behave disrespectfully even at the sentencing hearing on 20 th May. Thus he interrupted the Relief Magistrate as he was giving his decision and said things such as " hurry up, for goodness sake " and " I cannot be bothered whatever you say ". We also note what the Relief Magistrate said as part of his judgment:- " A transcript of what was said that morning before the first adjournment and later afterwards would merely show your constant interruptions. It would not show your body language. It would not record the volume of your shouting and the disruption which you were causing by your actions, which were in total disregard of the authority and dignity of this Court. It was for this reason that you were taken down to the cells to enable the Court to try to pull together a situation which had come about entirely as a result of your behaviour, and you were later returned in the hope that you would have cooled down somewhat. You had not. You went on shouting and your shouting was of a particularly offensive kind. I note the submission of Mr Tremoceiro that all your shouting was directed at him. He has a broad back, he said, and he took no personal offence, but he is not in a position to excuse you, because your offence was objectively a contempt of the whole process of the Court ." 48. The Relief Magistrate had of course been presiding on 21 st March but he had, in accordance with the advice contained in the judgment of Lawton LJ referred to above, not acted immediately. He was in fact passing sentence some two months later, so there was no question of passing sentence in the heat of the moment. Furthermore he had ensured that the appellant had the assistance of Advocate Tremoceiro as amicus . 49. In our judgment, the admitted contempt required a prison sentence. Making allowance for the two matters which we have found to have substance, we think that an appropriate sentence would be one of 2 months' imprisonment in place of that of 3 months imposed by the Relief Magistrate. 50. The appellant raised one other technical objection. He said that the default sentence of 6 weeks' imprisonment imposed in the event of non-payment of the fine imposed for the offence of driving without due care and attention meant that the total imposed by the Relief Magistrate exceeded the 12 months maximum permitted by Article 3(1) of the Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949 . But that submission is inconsistent with the case of AG-v-Teahan

[1976] JJ 409 which held that a default sentence of imprisonment in the event of non-payment of a fine is not caught by the restriction on the maximum sentence of imprisonment which may be imposed by the Magistrate under the 1949 Law. 51. The appellant argued that that case was different because Mr Teahan had chosen not to pay a fine whereas he (the appellant) was simply unable to do so. However, in our judgment, the cause of the non-payment of the fine is irrelevant. The clearly stated principle of the decision in Teahan is that a period of imprisonment ordered to be served in default of payment of a fine does not count when assessing the maximum period of imprisonment which may be imposed by the Magistrate. It follows that we reject this submission. 52. Having considered each of the offences in turn, we have of course stood back and considered whether the overall sentence was excessive for the offences involved. That overall sentence will now be 11

months' imprisonment rather than the 12 months imposed by the Magistrate. In our judgment an overall sentence of this level is not excessive. On the contrary, it is entirely merited for the offending which this appellant has carried out. It follows that we allow the appeal against sentence in respect of the period of imprisonment to the limited extent of varying the sentence for contempt of court from 3 months to 2 months, with the result that the aggregate sentence is one of 11 months' imprisonment. 53. That leaves only the question of the recommendation for deportation. 54. The Relief Magistrate applied the well-known two limbed test, namely whether the continued presence of the defendant in Jersey would be detrimental to the community and secondly, whether, if so, that consideration should override the rights under Article 8 ECHR of the appellant and any other innocent party. 55. The Relief Magistrate referred to the fact that the Social Enquiry Report showed the appellant to be at high risk of re-offending. He referred to the disregard for the law which the appellant had shown. He concluded that the appellant's continued presence would be detrimental. As to the second aspect, he pointed out that the appellant had a mother and a sister in Italy. He had a daughter in Jersey by someone who was no longer his partner and he only had supervised contact once a month with that child. He concluded that the interests of the community overrode the Article 8 rights of the appellant. 56. In our judgment, the Relief Magistrate's conclusion on this aspect cannot be faulted. The appellant has shown repeated disregard of the law and of the institutions which enforce the law such as the police and the courts. He has an alcohol and drug problem and is at high risk of re-offending. We have no doubt that his continued presence in the Island would be detrimental to the community. 57. We take into account his relationship with his daughter. But the fact is that she has been placed in care and now resides permanently with a maternal relative. The appellant has not seen his daughter since January 2013 and it is by no means clear that continued contact will be permitted or will be in the child's best interests. He has no other family connection with the Island having arrived only in 2010 and the relationship with the mother of their child has ended. We agree with the Relief Magistrate that the balance comes down firmly in favour of the interests of the community and accordingly we dismiss the appeal against the recommendation for deportation. Authorities *Petriella-v-AG*

[2013] JRC 057 . *Syvret-v-AG*

[2012] (1) JLR 132. *Crime (Disorderly Conduct and Harassment)(Jersey) Law 2008. Road Traffic (Jersey) Law 1956. AG-v-Capitano*

[2013] JRC 084 . *Magistrate's Court Sentencing Guidelines. Hall-v-AG 2001/251. R-v-Moran (1985) 81 Cr. App. R 51 CA. Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949. AG-v-Teahan*

[1976] JJ 409 . *European Convention of Human Rights 2000. Page Last Updated: 16 Sep 2016*
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