

JERSEY / JUDGMENT

The Attorney General v Barry John Dale

COURT
ROYAL COURT

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[2010]JRC232
ROYAL COURT
(Samedi Division)
17th December 2010

Before :	J. A. Clyde-Smith, Esq., Commissioner, and Jurats Morgan and Nicolle. The Attorney General -v- Barry John Dale Sentencing by the Inferior Number of the Royal Court,
following guilty pleas to the following charges:	1 count of: Impersonating a police officer, contrary to Article 23(1) of the Police Force (Jersey) Law 1974 (Count 1). 1 count of: False imprisonment (Count 2). 1 count of: Grave and criminal assault (Count 3). Age: 36. Plea: Guilty.
Details of Offence:	Dale was attending an 18th birthday party at St James' Wine Bar where the victim stole a mobile phone from his partner's handbag. The victim was confronted but left the venue. Dale suggested that a group should go in search of the victim. They did not do so, but Dale managed to identify where the victim lived. Dale went to the victim's house and spoke to his father, telling him he was from CID. The father brought his son, who was very drunk and had been asleep in his room, downstairs. Whilst the father then went to get dressed Dale led the drunken victim outside and into his car, and then drove away. When the father came

downstairs he found his son gone and called the police. In the car Dale began shouting and swearing at the victim, asking where the phone was. The victim did not respond, which made Dale angrier. He told the victim he was going to take him to the car park and finish him off. The victim became terrified. Dale's partner made several unsuccessful attempts to contact him by phone. When she did manage to get through she shouted at him to leave the victim alone. She could hear the victim asking for help in the background. Dale telephoned some of the people who had been at the party and asked them to meet him at Minden Place car park to identify the victim. On arrival at Minden Place they saw that Dale was "really hyped up and agitated" and begged him to let the victim go. Dale however ran to his car and drove to an upper level of the car park where he told the victim to get out of the car. The victim initially refused out of fear, but then got out when Dale told him he would let him call his father. However, instead Dale pushed the victim up against the safety mesh at the back of an empty parking space and a scuffle broke out. This was caught on CCTV. Dale punched the victim to the back of the head. The victim tried to run away but was caught by Dale who placed him in a headlock and walked him across the car park before pushing or throwing him to the ground and circling him. The victim recalled being thrown to the floor and said that he had curled into a ball to protect himself. He described how Dale had placed his foot on his throat before punching him to the head and kicking him in the stomach. Dale then picked the victim up and walked him to the top floor of the car park. Dale continued to be aggressive to the victim on this level although the pair were not captured on CCTV. Dale then left the scene, saying to the victim "I'll finish you later". The victim was found shortly afterwards by Dale's friends. He was curled on the floor shaking and crying. They assured him that they were not going to hurt him and saw that he was uninjured. They offered to phone the police or his parents. The victim initially refused but then agreed that they could call his father. In interview Dale denied impersonating a police officer. He admitted taking the victim voluntarily from his home to the car park but denied assaulting him. He described people who went through others' belongings as "scum on earth". He showed no remorse

whatsoever, saying
the victim was old enough to get what he deserved. He said he may have done a
wrong thing
but was happy that the victim had been so frightened as he wanted to teach him
a lesson. He accepted that the
victim would probably have thought that he was going to be thrown from the car
park. He added that if he had seen
the victim take the phone he would have cut his hand off and that in any other
country he would have been considered a hero for what he had done.
The victim subsequently admitted
taking the telephone and was given a written caution at a Parish Hall
Enquiry.

Details of Mitigation: Guilty plea; low risk of
re-offending; the theft of the phone was a form of provocation. While his initial
intention had been to
confront the victim, Dale had been overtaken by a “mad
fixation”. The entire episode
covered only 30 to 40 minutes and the period of false imprisonment only 20 to 25
minutes; very late letter of remorse (provided on the morning of sentence) with
no apology to the victim.

Previous Convictions: Historic; treated as of previous
good character.

Conclusions:

Count 1: 3 months’ imprisonment.

Count 2: 2 years’ imprisonment,
concurrent.

Count 3: 2½ years’ imprisonment,
consecutive to Count 1.
Total: 2 years’ and 9 months’
imprisonment.

**Sentence and
Observations of Court:** In opting for a
community based sentence, the Court concluded that the charge of impersonating
a police officer could lead to a concurrent sentence where it formed part of
the same series of events.

Count 1: 90 hours’ Community Service Order, equivalent
of 3 months’ imprisonment.

Count 2: 180 hours’ Community Service Order, equivalent
of 12 months’ imprisonment, concurrent.

Count 3: 240 hours’ Community Service Order,
equivalent of 18 months’ imprisonment, concurrent.
Total: 240 hours’ Community Service Order,
equivalent of 18 months’ imprisonment.
C. M. M. Yates, Esq., Crown Advocate.
Advocate J. C. Gollop for the Defendant.

JUDGMENT

THE commissioner: 1. This is an unusual case. The victim was invited to a private party and there rifled through handbags belonging to some of the guests. He was caught stealing one phone and, after he had been challenged and left, it was thought that other phones had been stolen. One of them had been purchased by the defendant for his partner. The defendant and guests felt violated and enraged by this conduct and decided to locate and confront the victim. As Mr Gollop says to us, mobile phones are more today than just phones, they routinely contain a great deal of personal data and information. 2. The guests knew where the victim lived and thought that the defendant was intending simply to confront him and retrieve the stolen phones. The defendant went alone to the victim's house at about 1:30 in the morning where he was met by the victim's father and he decided, Mr Gollop informs us, on the spur of the moment, to impersonate a police officer. From there the situation escalated; whilst the father was dressing, the defendant led the victim out, voluntarily, to his car and drove him away. According to the victim he started shouting and swearing at him saying he was taking him to the car park to finish him off. Despite calls from his partner to leave the victim alone, the defendant drove the victim to the Minden Place car park. Following an intervention by friends, who identified the victim as being the person who had been at the party, he then drove up another level and was seen to pin the victim against the mesh and punch him in the back of the head. He subsequently then walked the victim to the top floor of the car park where he was thrown on the ground, placing his foot at his throat, punching him in the head and kicking him in the stomach before leaving. The victim was found on the floor shaking and crying. 3. The Crown submit that it was the defendant's intention to put the victim in as much fear as possible and he seemed pleased in interview to hear that the victim had indeed been scared. The victim in fact suffered no serious or lasting injuries; indeed the Hospital could only find superficial abrasions to his shoulder. The defendant has pleaded guilty to impersonating a police officer, which is count one, false imprisonment which is count two and grave and criminal assault which is count three. He has no previous convictions for violence and indeed has not offended for some seventeen years and those offences took place when he was a very young man. In our view he is to be treated as a man of good character. He lives, and has lived for some time, with his partner and two children and runs a successful window and conservatory business. He is assessed at a low risk of re-offending. 4. The Crown invite us to find that in order to meet the interests of justice this kind of behaviour demands a sentence that comprises both a strong deterrent and punitive elements. In relation to the grave and criminal assault it has referred us to the guideline case of Harrison-v-AG

[2004] JLR 111 and in relation to the false imprisonment, to the case of AG-v-Marrett

[2000] JLR N 60b, the note of which reads as follows:- "There is a wide variation in possible seriousness between one instance of an offence of false imprisonment or kidnapping and another. Carefully planned abductions, where the victim is used as a hostage or where ransom money is demanded, come at the top end of the scale and will seldom be met with less than eight years' imprisonment. Where violence or firearms are used, or there are

other exacerbating features such as detention of the victim over a long period of time, then the proper sentence will be very much longer than that. Offences at the lower end of the scale very often arise after family tiffs or lovers' disputes, and seldom require more than 18 months' imprisonment, and sometimes a great deal less". 5. The Crown have also referred us to the case of AG-v-Simao [2004] JRC 017 where a girl was held against her will in a flat for some ten hours in circumstances that terrified her and for which a 2 year sentence was imposed. 6. The Crown seeks sentences of 3 months' imprisonment for the impersonation, 2 years for the false imprisonment and 2½ years for the grave and criminal assault, with the impersonation to run consecutively, giving a total of 2 years and 9 months. The Crown concedes that the false imprisonment commenced in the car park following the identification of the victim and lasted some twenty to twenty five minutes and the impersonation of a police officer related only to the victim's father; the victim knew who he was. 7. In our view the false imprisonment was part and parcel of the assault, the intention of the defendant was to frighten the victim in which he succeeded, but the actual violence inflicted was very limited. We have found the Harrison guidelines helpful. Whilst the assault and false imprisonment cannot be described as spontaneous, the degree of violence was low and it constituted a misguided and disproportionate reaction to conduct on the part of the victim which we do accept was provocative. Furthermore there is no record of the defendant having conducted himself in this manner in the past. 8. This is an isolated act of by a family man of good character who had been enraged by the conduct of the victim. It was clearly wrong for him to have taken the law into his own hands and he accepts that this is the case, but in our view the defendant should repay his debt for this serious offence to society within the community and not through a custodial sentence. The facts of this case do not compare, in our view, with the Simao case. Finally we regard the offences as arising out of one set of facts and therefore, in our view, concurrent sentences are appropriate. 9. On Count 1 you are sentenced to 90 hours' community service, which is the equivalent of 3 months' imprisonment, on Count 2 you are sentenced to 180 hours' community service, which is the equivalent of 12 months' imprisonment, on Count 3 you are sentenced to 240 hours' community service, which is the equivalent of 18 months' imprisonment; those sentences are to be served concurrently, so they give rise to a total sentence of 240 hours' community service or 18 months' imprisonment. Authorities Harrison-v-AG

[2004] JLR 111. AG-v-Marrett

[2000] JLR N 60b. AG-v-Simao

[2004] JRC 017. Evans and Phillips-v-AG [1997] JLR 94. AG-v-Cabot 2000/55B.

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