

JERSEY / JUDGMENT

The Attorney General v E

COURT

Royal Court

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**Inferior Number Sentencing – breach of the peace –
obstructing a police officer – grave and criminal assault –
malicious damage.**

[2016]JRC131**Royal Court****(Samedi)****29 July 2016**

Before :

J. A. Clyde-Smith, Esq.,
Commissioner, and Jurats Thomas and Ronge
The Attorney General

-v-

E

Sentencing by the Inferior

Number of the Royal Court, following guilty pleas to the following charges:

First Indictment

1 count of:

Conduct likely to cause a breach of the
peace (Count 3).

Second Indictment

1 count of:

Obstructing a police officer (Count 1).

Third Indictment

1 count of:

Grave and criminal assault (Count 1).

2 counts of:

Malicious damage (Counts 2 and 3).

Age: 23.

Plea: Guilty.

Details of Offence:

First Indictment: Count 3

The defendant had been in a relationship for approximately 3 years with the mother of his then 2 year old son. In July 2014 he had been arrested for an offence of affray.

In September 2014 he was placed on probation and it was a specific condition that he had no contact with his ex-partner. In breach of that condition he did have contact and stayed at the victim's home address. He became suspicious that she was having a relationship with another male and was jealous. When the victim received a text on her mobile the defendant tried to see who it was from. The victim bit the defendant's thumb so as to prevent him from taking her phone. The defendant picked up a large kitchen knife, pointed it towards his own neck and threatened to harm himself. He accepted that he was engaging in manipulative behaviour. When the victim had left the flat he had followed her for a short period to see if she was going to meet another man.

Later in the evening on the same day the victim and the defendant were at the victim's flat. He started crying and became agitated.

He threatened to kill the victim and himself. The victim called the Police and when the Police arrived the defendant ran away.

He was arrested 2 days later.

Second Indictment: Count 1

At 00.27 hours on 27th

November, 2015, police officers who had attended the Havana Nightclub in Bath Street advised the door staff that they were having difficulty with a man at the door. The officers spoke to the defendant and asked him to leave the area.

It was noted that the defendant could hardly open his eyes. His eyes were glazed. He was staggering and off balance. He was drunk. He declined to move away and argued with

the officer. He was asked leave the

area. He refused to do so. He was given a lawful order and refused

and he was then arrested. This

offence was committed whilst he was on bail and was also in breach of a curfew condition imposed on 3rd July, 2015.

Third Indictment

The victim had been out celebrating his work's Christmas lunch and he was walking home at approximately 22.00 hours. He described himself as being drunk. He saw two Portuguese males standing on a street corner.

He thought they were arguing.

As he walked past them he said words to the effect "Cheer up guys its Christmas". He continued to walk towards his home address and he recalls somebody approaching from behind but thereafter had little recollection of what occurred.

His next recollection was being in hospital with a police officer present.
CCTV footage showed the victim walking past the defendant and another male. It then showed the defendant reacting in an aggressive manner. The defendant attempted to get at or pursue the victim. Two other males were present who endeavoured to prevent the defendant from getting at or pursuing the victim. Despite the efforts of these other two men, the defendant was intent upon pursuing the victim. He was seen to break free and to follow the victim up the street out of view of the camera. The defendant via his counsel subsequently claimed that the victim made an offensive remark although he could not remember precisely what was said. He claimed that he pursued the man to remonstrate with him. There was no independent evidence as to precisely what had been said but it was clear from the CCTV footage that the defendant took great exception to what was said as he pursued the victim with persistence and vigour. The defendant's position was that having pursued and caught up with the victim it was the victim who initiated the violence by punching him to the face causing him a fractured jaw. The Crown accepted that the defendant had sustained an injury to his jaw. The Defence accepted that it was the defendant who approached the victim and therefore it was entirely conceivable that the victim had interpreted the defendant's approach as threatening and had punched the defendant in self-defence. Thereafter the combination of the painful jaw, loss of temper and the disinhibiting effects of alcohol caused the defendant to lose control and he pursued and attacked the victim as he continued to walk up the street. Eye witnesses then saw the defendant grab hold of the victim and push him onto the bonnet of a Mercedes car. The defendant persistently punched, kicked and kneed the victim as he lay on the bonnet. The defendant was wearing trainers. The victim was thrown to the ground and was then kicked to the body and he was also punched to the face a number of times. None of the kicks landed on the victim's head or face. The victim was then picked up by the defendant and another male. The defendant persisted in pursuing the victim. He punched him from behind to the head and the body and then jumped on his back to pull him to the ground and wrapped his arm around the victim's neck. The Police had been called and upon hearing the approach of the Police vehicles the defendant let go of the victim and left the area. He was subsequently located and arrested (Count 1). The owner of the Mercedes Benz the

following day noticed that a dent had been caused to the bonnet of her vehicle which she subsequently had repaired at a cost of £75 (Count 2).

The defendant was taken to Police

Headquarters. Because somebody else

was being booked in to custody he was held in the cell of the police van. During this time he was aggressive and

agitated and he spat blood over the inside of the cell. He consistently kicked the cell door

damaging it to a total cost of £62.19 (Count 3).

The victim sustained a variety of

injuries particularly to his eyebrow, forehead and ear. He provided a Victim Personal Statement

for the Court at sentencing. The

assault had exacerbated a pre-existing anxiety condition and it had a detrimental effect on his psychological wellbeing.

The offence was committed by the defendant

whilst on bail albeit he was not in breach of any specific bail condition.

The Crown applied the guidelines

provided by *Harrison v AG* and took a starting point of 3 years' imprisonment.

Details of Mitigation:

The Crown

The defendant had little by way

of mitigation. He did not have the

advantage of either youth or good character. He had committed offences of a similar nature. He expressed no remorse or

regret. Not guilty pleas had

initially been entered and guilty pleas only offered some 2 weeks before the trial date. The defendant was

therefore not entitled to the full one third deduction: the Crown had made an allowance of 25% for guilty pleas.

He was assessed at being high risk of violence and of general re-offending together with alcohol and drug misuse.

The Defence

The Defence contended that age

was a relevant factor as he had only been 21/22 when the offences were committed. Reliance placed upon the

reports before the Court in relation to his learning difficulties and low intellect. Length of time earlier

serious offences hanging over his head which ultimately were not proceeded with by the Crown caused him stress.

Previous issues with drugs and alcohol. Accepted by the Defence that alcohol was involved in the grave and criminal assault etc.

Previous Convictions:

6 convictions for a total of 10

offences including common assault x 2, affray x 2, larceny, malicious damage and breach of Probation Orders.

Conclusions:

First Indictment

Count 3:

2 months' imprisonment.

Second Indictment

Count 1:	1 month's imprisonment, consecutive. Third Indictment
Count 1:	2 years' imprisonment, consecutive.
Count 2:	1 month's imprisonment, concurrent.
Count 3:	1 month's imprisonment, concurrent. Total: 2 years and 3 months' imprisonment. Recommendation for deportation sought.
Sentence and Observations of Court:	The Court summarised the offences. The grave and criminal assault was the most serious offence. It was an unprovoked vicious assault on the streets of St Helier pursued with purpose and vigour. The defendant had previous convictions – he was at high risk of re-offending. The Court had listened carefully to the mitigation. Noted his guilty plea albeit late, stress of the proceedings and relative youth. The Court also noted his troubled upbringing and low intellect. However this was a very serious assault. It was unprovoked, pursued with real purpose and vigour causing injuries to the victim and psychological impact. The Court repeated the observations previously made in AG v Cummings. The Court's view was that the starting point was too low and increased it to 3 years' 6 months. The Court also considered the final sentence of 2 years to be too low. It also viewed the obstruction of police officers as a more serious offence than the breach of the peace. Due to totality, the Court agreed that those offences should be concurrent with each other. The recommendation for deportation was adjourned for a date to be fixed as the Court requested further information to be obtained before considering the application. First Indictment
Count 3:	1 month's imprisonment. Second Indictment
Count 1:	2 months' imprisonment, concurrent. Third Indictment
Count 1:	2 years' and 3 months' imprisonment, consecutive.
Count 2:	1 month's imprisonment, concurrent.

Count 3: 1 month's imprisonment, concurrent.
Total: 2 years and 5 months' imprisonment.
The recommendation for deportation was adjourned for a date to be fixed as the Court requested further information to be obtained before considering the application.
J. C. Gollop, Esq.,
Crown Advocate.
Advocate NP. S. Landick
for the Defendant.

JUDGMENT

THE commissioner: 1. The defendant stands to be sentenced under the First Indictment for a breach of the peace, committed in the house of his former partner on 27th October, 2014, committed in breach of the terms of an earlier Probation Order; under the Second Indictment for obstructing the police outside the Havana Nightclub on 23rd November, 2015, committed whilst on bail and in breach of a bail condition; and under the Third Indictment for grave and criminal assault and malicious damage, also committed whilst on bail. 2. The grave and criminal assault is the most serious of the offences, being described by the prosecution as an unprovoked and vicious assault on the streets of St Helier, which was pursued with real purpose and vigour. The defendant claims that the victim, who passed him in the street and was wholly unknown to him, said something offensive but he cannot recall what was said. The victim denies having said anything offensive or provocative. As the prosecution say, even if the victim did say something provocative, it would not have justified the defendant's subsequent conduct. Although the defendant received a punch to his jaw in the early part of the incident the evidence shows that at no time was the victim seen to act in an aggressive or violent manner. 3. The defendant has previous convictions for public order offences and is assessed at a high risk of reoffending. The prosecution submit that a starting point of 3 years is appropriate for the grave and criminal assault but only allowing a 25% reduction for the guilty pleas, which were proffered some short time before the trial in relation to the grave and criminal assault. 4. The prosecution say there is little other mitigation. The defendant is not of good character, is now age 23 and has shown no remorse or regret. And the prosecution move therefore for a sentence of 2 years for the grave and criminal assault, 2 months consecutive for the breach of peace, and 1 month, consecutive for the obstruction, making a total of 2 years and 3 months'. 5. In terms of mitigation we have listened carefully to everything put forward, if we may say so, very thoroughly, by Advocate Landick on behalf of the defendant; in particular and in summary, the guilty pleas, albeit late in relation to the grave and criminal assault, the stress of the proceedings, his relative youth, he was 21 and 22 when the first two offences were committed, his troubled early background, and his intellectual impairment. However, this was a very serious assault which we agree was unprovoked and which we agree was pursued with real purpose and vigour, causing the physical injuries, set out in the doctor's report and the psychological impact upon the victim made clear by his statement. 6. As

the Court has said repeatedly and as was said in AG-v-Cummings [2006] JRC 070:- “...those who commit violence in public places in St Helier particularly if they use weapons (but the weapon is not necessarily going to reflect that policy) will face substantial sentences. There is too much violence in Jersey, often fuelled by drink and the Court is determined to try and send a message that such matters will not be accepted.” 7. In our view the starting point is too low and we would increase it to 3 years and 6 months. The final sentences sought are also too low. We also take the view that the obstruction of the police officer was a more serious offence than the breach of the peace, although in the light of the totality principle we are going to make those two sentences concurrent to each other. 8. On the First Indictment, Count 3, conduct likely to cause a breach of the peace, you are sentenced to 1 month’s imprisonment. On the Second Indictment, Count 1, obstructing a police officer, you are sentenced to 2 months’ imprisonment, concurrent. Under the Third Indictment, Count 1, grave and criminal assault, you are sentenced to 2 years and 3 months’ imprisonment, consecutive to the earlier counts. On Count, malicious damage, you are sentenced to 1 month’s imprisonment, concurrent to the earlier counts, and on Count 3, malicious damage, you are sentenced to 1 month’, imprisonment, concurrent to the earlier counts, making a total sentence of 2 years and 5 months’ imprisonment. 9. In terms of the issue of deportation the Court is of the view that we do not have enough information, in particular to consider the effect of Article 8 of the Convention on the defendant’s child, his former partner and mother. We are therefore going to adjourn this part of the case to a date to be fixed by counsel before this Court, as presently constituted, firstly, for a report to be commissioned by the prosecution from the Children’s Department in relation to the child and the effect of deportation on that child and secondly, for the appointment of a lawyer, payable out of the legal aid vote, to take a statement from the defendant’s former partner and from his mother on the issue of the defendant’s possible deportation and their Article 8 Convention rights. The task of the lawyer will be limited to obtaining those statements for the Court but not to otherwise attend at the adjourned hearing. If either the mother or the former partner wish to be heard at the adjourned hearing (they must, of course, be informed of its date) they can attend personally to make that application or they can apply for legal aid to make that application through a lawyer. Authorities AG-v-Cummings

[2006] JRC 070. Harrison-v-AG

[2004] JLR 111. Camacho-v-AG

[2007] JLR 462. Secretary of State for the Home Department-v-CT (Vietnam) [2016] EWCA Civ 488.

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