

JERSEY / JUDGMENT

The Attorney General v John Sebastian Nicolle

COURT

ROYAL COURT

BEFORE

F. C. Hamon, Esq., O.B.E., Commissioner and
Jurats Tibbo and King.

The Attorney General

-v-

John Sebastian Nicolle

1 count of:

Possession of a controlled drug, contrary to
Article 6(1) of the Misuse of Drugs (Jersey)
Law, 1978.

(Count 1: cannabis).

1 count of:

Aided, assisted or participated in attempted
breaking and entry with intent.

(Count 2A).

1 count of:

Having prohibited weapon in public place,
contrary to Article 33(1) (b) of the Firearms (Jersey)
Law 2000.

(Count 3).

[On 5th February, 2004,
the Defendant was found Not Guilty on Count 2 of the indictment, and was convicted
on Count 2A].

Age: 31.

Plea: Guilty to

Count 1 and 3; convicted at criminal assize on 5th February, 2004, on Count 2A.

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ROYAL COURT

(Samedi Division)

26th March 2004

Before: F. C. Hamon, Esq., O.B.E., Commissioner and
Jurats Tibbo and King.
The Attorney General
-v-
John Sebastian Nicolle
1 count of:
Possession of a controlled drug, contrary to
Article 6(1) of the Misuse of Drugs (Jersey)
Law, 1978.
(Count 1: cannabis).
1 count of:
Aided, assisted or participated in attempted
breaking and entry with intent.
(Count 2A).
1 count of:
Having prohibited weapon in public place,
contrary to Article 33(1) (b) of the Firearms (Jersey)
Law 2000.
(Count 3).
[On 5th February, 2004,
the Defendant was found Not Guilty on Count 2 of the indictment, and was
convicted
on Count 2A].
Age: 31.
Plea: Guilty to
Count 1 and 3; convicted at criminal assize on 5th February, 2004, on Count 2A.

Details of Offence: On 21st January, 2003, police officers
attended Nicolle's home address to interview him on unrelated
matters. Nicolle was found to be in
possession of a small amount of cannabis weighing 4.91 grams for personal use.
At approximately 04.00 hours on 21st March, 2003,
Nicolle together with an accomplice attempted to break into the premises of a
turf accountants located on Gorey coast road. A reinforced glass panel in the front
door was struck several times with some form of implement. Residents living above
the premises were
woken and called the police.
Nicolle and his accomplice fled the scene having been unable to gain
entry to the premises. The police
attended and shortly afterwards Nicolle was apprehended on Gorey Hill. He denied
all knowledge of the incident
claiming that he had been at a friend's house on Gorey Pier whom he would
not identify as he said they had been smoking cannabis. He maintained that story
until his trial
when, as a result of glass fragments found on his clothing linking him to the
scene of the offence, he admitted presence at the scene but claimed that he had
been there as an innocent bystander when his accomplice had tried to break into
the premises. By a majority
verdict, the jury rejected the defence.
When stopped on Gorey Hill by a
police officer on the occasion of the offence referred to in count 2 Nicolle

was found to be in possession of a small aerosol canister resembling a black pen which turned out to be a CS gas canister. He claimed he had been given it by a friend.

Details of Mitigation:

Nicolle pleaded guilty to counts 1 and 3 but not guilty to the more serious offence in count 2 necessitating a trial at which forensic experts had to be called as Nicolle did not disclose his line of defence by which he admitted presence at the scene of the crime during the trial. It was contended on his behalf that he played a junior role to his accomplice having acted on the spur of the moment. He acted as a mere lookout. The Social Enquiry Report referred to extremely difficult family circumstances. He had also suffered a motorcycle injury to his leg necessitating many operations as a result of which it was claimed that he had formulated an addiction to opiates for pain relief. His record was bad but did not have any prior convictions recorded on it for offences of break and entry. His record of convictions was serious but mostly drug related. Nicolle expressed remorse. He appeared to be trying to change his life and had been seeing counsellors voluntarily and had submitted to drugs testing.

Conclusions:

Count 1: 1 month's imprisonment.

Count 2A: 18 months' imprisonment.

Count 3: 1 month's imprisonment, all consecutive, total: 20 months' imprisonment.

**Sentence and
Observations of Court:**

Having regard to the contents of the Social Enquiry Report in particular, together with the other mitigating features advanced by the defence, the Court expressed itself willing to take a risk by placing Nicolle on two years probation subject to conditions that he (1) attend on the "offending is not the only choice" programme, (2) liaise with the Alcohol and Drug Service and attend regular sessions on a voluntary basis, (3) submit to referral and assessment by a psychologist if necessary, (4) liaise with the Housing Department regarding accommodation, (5) attend regular supervision sessions to monitor his progress. The Court gave Nicolle a clear warning that if he fails to comply with the conditions of his Probation Order he will be returned to Court and will be imprisoned. The Court observed that the Crown's conclusions were perfectly reasonable. The CS gas canister was ordered to be destroyed.

A.D. Robinson, Esq., Crown Advocate.
Advocate R. McRae for the defendant.

JUDGMENT

THE COMMISSIONER: 1. Nicolle faces three counts. He was indicted on the 19th September, 2003, and on the charge of aiding, assisting and participating in an attempted break and entry he was found guilty by a majority verdict of an Assize Jury on 5th February, 2004. 2. On the attempted breaking and entering of the Turf Accountants at Gorey, it is clear from the photographs that we have seen that considerable force has been used on the re-enforced glass panel. The break-in was attempted with a hammer. It was only at trial that Nicolle admitted that he had been present at the scene. It fell for the Jury to decide whether he had been present as an innocent bystander or not and, of course, they rejected the explanation of the innocent bystander. 3. The spray gun, with CS gas under pressure, is a dangerous weapon but it had never been used. He pleaded guilty to that offence and to the relatively minor offence of possessing cannabis. 4. As I say these are relatively minor offences in relation to the main offence. Nicolle is 31, has a poor record which, of course, has been put before us. He has already served two fairly long prison sentences for drug offences but nothing for breaking and entering. 5. We have carefully considered the cases of A.G. -v- Gaffney [1995]JLR N.22; (5th June, 1995) Jersey Unreported; [1995/101], A.G. -v- Da Silva (4th December, 1997) Jersey Unreported; [1997]/218], A.G. -v- Moreira [2003]JRC083A. 6. This was an attempt, an attempt which failed at 4 a.m. at Gorey. The Crown in Court, in Advocate Robinson's words, unhesitatingly moved for a prison sentence of 18 months' imprisonment. Advocate McRae in his powerful address to us asked for a non-custodial sentence. He submitted - and we use his words - that his client was a junior participant and it is agreed that the hammer was used but by the senior participant who received three years last week, but surprisingly not for this offence. 7. Nicolle had no hammer or gloves when he was arrested. The argument of the defence is that Nicolle went to purchase cannabis that night and it was not a successful journey. After the attempted break in, O'Brien - the other participant, - broke windows and caused damage when he later broke into the Dolphin Hotel. The glass from the Turf Accountant's window found on Nicolle forensically put him within 10 feet of the glass smashed during the attempted break-in. 8. He was given the chance by police in interview to deny involvement. He did not and his words were "I do not want to grass anyone up." In the defence submission Advocate McRae describes Nicolle's involvement at the attempted break-in as at the bottom end of the criminal scale. 9. We have looked at the family background and without going into it, it is appalling. The motoring accident was an extremely serious one and without future resolution. The probation report does offer certain encouragement. As Advocate McCrae says, the offender has apparently broken the cycle of offending of his twenties and it is now three years since his release from prison. There have been delays in this matter which were not of his making and he has already spent three weeks in custody.

10. We have read all the letters very carefully, and we understand that there is a job to go to when your fracture improves. We have also read a letter from your girlfriend which has been very helpful. You have not seen it and it was handed up to us just before we retired. We understand that you may have a flat in Hilary Street.

11. We are going to take a risk, we are going to put you on two years' probation. The terms of the probation order will include the following: you are going to attend the Offending Is Not The Only Choice Programme, to improve your decision making skills and to look at choices and alternatives. You are going to liaise with the Alcohol and Drug Service and attend regular sessions on a voluntary basis. You are going to be assessed and referred to a psychologist, if that is deemed necessary. There is going to be liaison with the Housing Department regarding your accommodation and you are to attend regular supervision sessions to monitor your progress in all work and to re-enforce work done and, of course, to return to work as soon as appropriate.
12. I will read to you the formal part of the notice. The formal notice of the conditions to be observed are these and you must agree with them. That you be of good behaviour and appear before the Court when called upon to do so. That you will be under the supervision of a Probation Officer appointed under the Law of 1937 on Probation, that you reside in such a place and work in such employment as the Probation Officer shall direct. That you notify the Probation Officer forthwith of any pending changes of residence or employment. That you are not to travel outside Jersey without the permission of the Court and, of course, that you keep in touch with the Probation Officer in accordance with such instructions as may from time to time be given by the Probation Officer and in particular if a Probation Officer so requires you receive visits from the Probation Officer at your home.
13. I have to tell you that if you fail this, - and it is going to be two years and it will be a difficult two years for you - you will be brought back to Court and as we find that the conclusions of the Crown Advocate were perfectly reasonable you will go to prison. You have two years to sort yourself out. If you break the probation during that time, and the Probation Officer brings you back to Court there is every chance that you will be going into custody and you will not have the benefit of the three weeks you have already spend in custody as a result of that.
14. We order the destruction of the CS gas and cannabis. Authorities Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2nd Ed'n): pp. 141-147. A.G. -v- Gaffney [1995]JLR N.22; (5th June,
- 1995) Jersey Unreported; [1995/101]. A.G. -v- Da Silva (4th December, 1997) Jersey Unreported; [1997/218]. A.G. -Moreira [2003]JRC083A. A.G. -v- Le Maistre (2nd May, 2000) Jersey Unreported; [2000/77].

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