

JERSEY / JUDGMENT

The Attorney General v Marcin Skalimowski

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Inferior Number Sentencing - assault - possession of an offensive weapon. [2023]JRC151 Royal Court (Samedi) 18 August 2023 Before : Sir Timothy Le Cocq, Esq., Bailiff, and Jurats Ronge and Opfermann The Attorney General -v- Marcin Skalimowski Sentencing by the Inferior Number of the Royal Court, following guilty pleas to the following charges: 1 count of: Assault (Count 1). 1 count of: Possession of an offensive weapon, contrary to Article 43(1) of the Firearms (Jersey) Law 2000 (Count 2). Age: 42. Plea: Guilty. Details of Offence: On 20 March 2023, the Defendant was drinking at St James' Wine Bar, St Helier, when another man, unknown to him, approached him at the bar. CCTV shows that the pair do not appear to interact, until the Defendant suddenly looked at the man and forcefully punched him to the face, causing the man's face to hit the bar. The Defendant casually turned away and had some more of his drink. He was removed from the premises. When being removed, the Defendant told the door staff that the man had asked him if he was gay. The Defendant left the area but returned approximately ten minutes later. He was carrying a bag, which the door staff suspected to be a gun bag. Door staff also noted a sharp weapon on his right hip, which was later confirmed to be a bayonet. The door staff were scared, one being fearful for his life. The Defendant walked towards the door staff aggressively and asked, "is he still inside". The door staff assumed this to be the man he had earlier assaulted and told him that the man had left. The Defendant put the bag on the floor and started the unzip it. No threats were made, but the door staff were worried for their safety and that of others and so one grabbed hold of him and pinned him on the floor. Another man assisted. Inside the bag was a deactivated AK47 rifle. It was not capable of holding rounds, nor were there any in the bag. The Defendant stated in interview that he had taken the rifle to show colleagues and said he had the knife on his belt before he left the bar. This was inconsistent with the CCTV which shows him alone in the bar and without the bayonet on his hip. He stated he had been drinking alcohol but was not drunk and noted this was the first time he had drank alcohol in the last five months. The Defendant stated that the man was bothering him and so he hit him because he "was coming up too close to me and it was almost as if the behaviour was of a gay person". The Defendant also stated that he would rather gay people "kept themselves to themselves". On 13 April 2022, the Magistrate's Court imposed a 180-hour Community Service Order for offences of failing to provide a specimen for analysis and driving without a licence and insurance. The Defendant had not completed any hours of this order due to ill-health. The Community Service team concluded that the order was unworkable. Details of Mitigation: Guilty plea, good character, remorse, ill-health causing difficulties in completing community service. Previous Convictions: Previous

convictions for four motoring offences and two motoring offences which were dealt with at Parish Hall Enquiry. Conclusions: Count 1: 3 months' imprisonment, concurrent. Count 2: 12 months' imprisonment Review/breach of Community Service Order, 12 months' imprisonment, consecutive. Total: 2 years' imprisonment. Forfeiture and destruction of the bayonet sought. Exclusion Order sought for a period of 12 months, to commence upon the Defendant's release. Recommendation for deportation not sought. Sentence and Observations of Court: Count 1: 3 months' imprisonment, conclusive Count 2: 12 months' imprisonment. Breach of the Community Service Order: 3 months' imprisonment consecutive. Act of mercy given in relation to breach of Community Service Order. Breach of Community Service Order discharged. Total: 1 year and 3 months' imprisonment. Exclusion Order made for a period of 24 months, to commence from the sentencing date. Recommendation for deportation not made. Forfeiture and destruction of the bayonet ordered. The Court's preference that the deactivated rifle is retained by the Police and not returned to Defendant. Counsel to liaise in this regard. Application may be required to be made if Defendant objects. Crown Advocate L. Sette, for the Attorney General Advocate M. L. Preston for the Defendant ex tempore JUDGMENT THE BAILIFF: 1. You are to be sentenced today for an assault against a stranger in a bar, following which you returned to the place of that initial crime armed with a bayonet, and that forms the second offence with which you are charged, together with a deactivated AK47 assault rifle. You were looking for the victim that you had assaulted earlier. The current offending puts you in breach of the order made by the Magistrate's Court on 30 April last year that you carry out 180 hours of community service for driving without insurance and failing to provide a specimen. 2. We have had the opportunity of reviewing the video evidence which is stark. On the 20 March 2023 you were drinking at St James' wine Bar and was standing at the bar when another man (the victim) approached you. There was no apparent interaction but then you forcefully punched the man to the face, and he hit the bar as a result. You then appeared to turn away casually and to take something to drink. You appeared to the Court to take your violence in your stride. 3. You were then escorted off the premises by the door staff. You told the door staff that the man had asked you if you were gay. You then made a lunge towards the head of the door staff before being told to leave the area. You returned approximately 10 minutes later carrying a bag and you walked towards the entrance of the premises asking the door staff whether your victim was still inside. The head of the door staff noted you had a knife strapped to your hip, and we have seen pictures of the knife which is of a bayonet type and designed to inflict harm or death on people. You then began to open the bag that you were carrying and at that point were restrained by door staff because they were in fear for themselves and for others. The police were called and, in the bag, the deactivated AK47 assault rifle was found. 4. During interview you maintained that you had brought the gun to show a friend, but you had clearly been drinking a significant quantity of alcohol. Your explanation for punching the victim was that he was coming too close to you, and it was almost as if the behaviour was of a gay person. You explained you had nothing against gay people, but you would rather they kept themselves to themselves rather than bothering straight people. It seems to us that this offending contains a significant element of homophobic behaviour and that is an aggravating factor. 5. We note by way of mitigation that you entered early guilty pleas, and we accept that you should receive full credit for those pleas. We also note that you are to a significant extent of good

character, and we treat you as such accordingly. We also pay regard to the references that have been written on your behalf which paint the picture of you as a hard-working family man committed to your family. We accept your expressions of remorse as being genuine and we are comforted by the fact that you accept yourself that your drinking of alcohol is a significant problem, and that is evidence to us to an extent by your acceptance of the Exclusion Order recommended by the Crown. 6. We take into account your medical difficulties which it seems to us explained your inability to carry out the Community Service Order to which you were subject. 7. The Court has said on a number of occasions that carrying a knife in public even if it is concealed, which it was not, is an extremely dangerous thing and is never acceptable. It is quite clear that arming yourself with a bayonet attached to your belt is a serious example of this. Once a knife is carried as the Court has said on earlier occasions, to a very considerable extent the outcome of what it might be used for is outside of your control. We have no doubt that the custody threshold is met, and the use of a knife must be met with a custodial sentence. It was an incredibly stupid and reckless thing to do. 8. We have been saddened by the effect of your behaviour on your family. This is something that you did not take into account when you went out and offended. It is too easy for defendants to point to the suffering that their own behaviour has caused their family when moving the Court for a lower sentence. It is for a defendant before the Court to have thought first about the effect of their behaviour and acted as a good parent and husband or partner. 9. We turn now to the way we propose, in the light of what we have said, to deal with this matter.

10. Firstly, on the matter of deportation, we accept as the Crown has argued that the first limb of the test in the case of *Camacho v Attorney General* [2007] JLR 462 has been met, in as much as other things being equal your continued presence in the Island is detrimental. However, we also accept that the second limb, namely the effect on your Human Rights and those of third parties, specifically your child and your wife are things we must take into account. Given the lack of previous convictions, on balance, we think that the Crown's conclusion that there should not be a deportation recommendation made is correct and we do not recommend your deportation at the end of your sentence.
11. We impose the Exclusion Order in the terms that are usually used in these circumstances, but we do not follow the Crown's recommendation for 12 months and instead we impose it for 24 months from today, and we do so because it is uncertain precisely when you might be released from custody that you will now serve. (i) With regard to Count 1, the assault, you are sentenced to three months' imprisonment. (ii) With regard to Count 2, the weapon, you are sentenced to twelve months' imprisonment concurrent with Count 1. (iii) For breach of the Community Service Order, we discharge the Order because it does not seem there is any purpose in continuing with it and instead as an act of leniency, we impose a sentence of three months' imprisonment to run consecutively. Making a total of 1 year and three months imprisonment. (iv) We order the destruction of the bayonet.

12. From the Court's point of view clearly the Defendant in this case has illustrated that he is not capable of dealing responsibly with a replica firearm and that it would be the Court's preference that that replica firearm is retained and destroyed in the ordinarily course of events.
13. The deactivation certificate did not apply to that weapon in any event. Whilst the Court's preference is that this weapon is retained and then destroyed but it may be that the legal consequences are otherwise, and the Court must leave that in the hands, I think of counsel failing which an application can be made if one is justified. Authorities Firearms (Jersey) Law 2000. *Camacho v AG* [2007] JLR 462. *AG v Cox* [2019] JRC 172. *AG v Gomes* [2013] JRC 020. *AG v Hare* [2008] JRC 168. *Harrison v AG* [2004] JLR 111]. *R v Simpson* [1983] 3 All ER 789.

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