

JERSEY / JUDGMENT

The Attorney General -v- Roger James Baksa

COURT

Royal Court

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Source record

**Grave and criminal assault - dispute as to the basis upon which the
Defendant was to be sentenced**

[2022]JRC109

Royal Court

(Samedi)

19 May 2022

Before : R. J. MacRae, Esq., Deputy Bailiff, sitting
alone.
The Attorney General
-v-
Roger James Baksa
Ms R. C. L. Morley Kirk, Crown Advocate.
Advocate C. G. Hillier for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: 1. On 10th February 2022, the Defendant was found guilty by the jury on Count 1 (grave and criminal assault on the Complainant, the Defendant's former partner) on Tuesday 15th June 2021 and Count 3 (attempting to pervert the course of justice – a subsequent attempt to persuade the Complainant to withdraw her complaint). 2. The Defendant was found not guilty on Count 2, an allegation of grave and criminal assault on the Complainant on Thursday 17th June 2021. 3. It was not until the day upon which the Defendant was due to be sentenced, namely 22nd April 2022, that it became apparent that there was a dispute between the Crown and the defence as to the basis upon which the Defendant was to be sentenced. In future it will be necessary for such disputes to be identified well in advance of sentence, as the consequence of late identification of the issue in this case led to the sentencing of the Defendant being adjourned until 20th May 2022. 4. On 22nd April 2022, I gave an ex tempore judgment in relation to certain of the matters in dispute between Crown and defence (AG v Baksa [2022] JRC 098), indicating that the defence would be able to renew its contentions if appropriate in respect

of those matters and said that there were three matters in particular that I was unable to resolve without further assistance from the parties, and accordingly directed that in relation to those facts in dispute, the defence file and serve its written submissions by 5pm on 29th April 2022 and the Crown file and serve its written submissions in response by 5pm on 6th May 2022, on the footing that I would thereafter consider those submissions and provide my ruling to counsel in advance of the Defendant being sentenced by the Inferior Number. 5. At the hearing on 22nd April 2022, the parties addressed me as to how I ought to approach this matter. Those submissions are consistent with the recent decision in AG-v- Williams [2022] JRC 103 on 4th May 2022. 6. In that case, I said: “4. The dispute between the parties engages Article 50 of the Criminal Procedure (Jersey) Law 2018 which has not previously been considered by the Court. It is appropriate to consider the terms of this Article and the principles under which the Court should act when it is engaged before turning to the nature of the dispute between the Crown and defence. Article 50 “Sentencing where facts in dispute

- (1) This Article applies where a defendant found guilty is to be sentenced, and the defence disputes the facts upon which the defendant was found guilty.
- (2) Where this Article applies, the trial court – (a) shall, if invited by the defence or prosecution to do so; or
- (b) may, of its own motion, communicate its view of the facts to the sentencing court.
- (3) Where, under paragraph (2), the trial court has communicated its view of the facts to the sentencing court, the sentencing court may sentence the defendant on the basis of the facts so communicated.
- (4) In this Article - (a) “trial court” means - (i) where the defendant was tried by the Royal Court sitting with a jury, the Bailiff, or (ii) where the defendant was tried by the Inferior Number of the Royal Court sitting without a jury, the Bailiff and Jurats; (b) “sentencing court” means the Royal Court sitting as the Inferior Number or Superior number, as the case requires.”
5. Both parties agree that Article 50 is engaged in this case by virtue of the dispute between the Crown and the defence. The purpose of Article 50 was, as is clear from its terms, to enable the Court, whether the judge alone in the case of a trial by jury, or the Bailiff and two Jurats in the case of trial by the Inferior Number, to communicate to the sentencing court, the members of which will not (in the case of trial by jury) or to some extent will not (in the case of conviction by the Inferior Number and sentence by the Superior Number) have witnessed the evidence at trial. 6. Although there is no similar provision in English law – which is unsurprising because the judge who presides over the trial will, in most instances, be the sole determinant of sentence – there is helpful authority in the case of Regina -v- King [2017] EWCA 128, in which the Court of Appeal considered how the court should act in the event of a dispute as to the factual basis of a jury’s verdict. At paragraph 31 the court said: “In our view the correct approach by the judge, after a trial, to the determination of the factual basis upon which to pass sentence, is clear. If there is only one possible interpretation of a jury’s verdict(s) then the judge must sentence on that basis. When there is more than one possible

interpretation, then the judge must make up his own mind, to the criminal standard, as to the factual basis upon which to pass sentence. If there is more than one possible interpretation, and he is not sure of any of them, then (in accordance with basic fairness) he is obliged to pass sentence on the basis of the interpretation (whether in whole or in relevant part) most favourable to the defendant.”

7. I agree with the submission made by both parties that when the Court is considering communicating its view of the facts to the sentencing court under Article 50, then it is necessary for the judge, if there is more than one possible interpretation of the factual basis of the jury’s verdict to make up their own mind to the criminal standard as to that factual basis and correspondingly, if the judge is unable to be satisfied so that they are sure of that basis to pass sentence on the interpretation most favourable to the defendant.” 7. At paragraph 11 in AG -v- Williams I said: “I note from Archbold 2021 Edition at paragraph 5A-272 that in the case of Byrne [2002] EWCA Crim 1975, the Court of Appeal held that the sentencer should give a short explanation of the reasons for reaching their conclusion on the facts, but it is not necessary to review the whole the evidence. Archbold also states, on the basis of English authority, that the Court of Appeal will not interfere with a finding of fact made by the judge in such circumstances if the judge has properly directed himself, unless the Court considers that no reasonable jury could have reached the judge’s conclusions.” 8. Accordingly, the following observations can be made about Article 50 hearings: (i) It is necessary for the Crown and defence to alert the Court to the fact that there is a dispute regarding the facts upon which the defendant was found guilty as soon as possible and to identify the nature of that dispute; (ii) The Court should thereafter determine the issue as swiftly as possible giving the parties the opportunity to make submissions either orally or in writing, or, if necessary (as in this case) both; (iii) The judge (or judge and Jurats after an Inferior Number trial) when considering the determination of the factual basis must make up their own mind as to whether they are satisfied to the criminal standard as to the disputed facts; (iv) If the judge (and Jurats if appropriate) is unable to be sure of any basis advanced then sentence must be passed on the basis of the interpretation of the evidence most favourable to the Defendant;
- (v) Such determination should be the subject of a judgment provided to the parties prior to sentence; and (vi) The trial court should disclose to the parties any communications with the sentencing court in respect of the former’s view of the facts when such communication is made and in any event prior to sentence. 9. I now turn to this case, reminding myself that a short explanation of the reasons for reaching the conclusions that I have is required, which should not consist of a review of the whole of the evidence.
10. The dispute concerns the facts giving rise to the offence of grave and criminal assault committed by the Defendant on the evening of 15th June 2021. On that day the Defendant attended the Complainant’s home to see their son. There was an argument. The parties ended up in the hallway. The Complainant said in her evidence in chief that the Defendant pushed her and she ended up on the floor with the Defendant kicking her in her stomach.

He kicked her a couple of times and the kicks were forceful. In her witness statement made on 18th June 2021, just after midnight, the Complainant also said that the Defendant accused her of being pregnant and, by inference, suggested that that was the reason that the Defendant kicked her in the stomach. Furthermore, at one point in her evidence, the Complainant said that the Defendant, when assaulting her, called her a “smackhead, junkie, unfit Mum”. These are all matters that were referred to in the Crown’s summary of facts to be placed before the Jurats for the purpose of sentence and are (as explained below) contested by the Defendant who, in any event, still continues to deny the assault.

11. There were other matters which were originally disputed by the defence which were the subject of the ex tempore judgment referred to above, including the Crown’s assertion that this was an incident of “domestic violence”. I have already held that I am satisfied that this was the case. The jury were told by the Crown (page 25 of the transcript of day 1 of the trial) that these were “domestic violence assaults, because they happened within the context of a relationship”. In my view this was unarguably the case. Further, I note the definition of “domestic abuse” at paragraph 3 of the Attorney General’s Code on the Decision to Prosecute: Supplementary Guidance, Domestic Abuse as follows: “Any incident or pattern of incidents of controlling [or] coercive behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality.”
12. Further, Article 2 of the Draft Domestic Abuse (Jersey) Law which has recently been adopted by the States defines “domestic abuse” as abusive behaviour by one person towards another if they are both aged 16 or over and are “personally connected” to each other. “Personally connected” is defined in Article 4 and includes persons who “are, or have been, in an intimate personal relationship” and persons who “are both parents of the same child”. Both these definitions are consistent with this being a domestic abuse case.
13. Secondly, the Crown has described the Complainant as “vulnerable”. The Crown told the jury, and the evidence supported this (page 25 of the day 1 transcript), that the Complainant had a background of drug addition, had experienced intervention from the Children’s Service, was subject of pre-proceedings at the date of the offence and that she had been served with an eviction notice on the date of the offence by her housing provider Andium Homes. These two latter matters were the subject of an agreed admissions. Having regard to the evidence, I said to the jury (page 50 transcript day 3 of the evidence) “The Crown described [the Complainant] as vulnerable person, you may have no difficulty in concluding that they were correct in so doing. The alleged assaults occurred at a time when she had just heard that she might lose her home by way of eviction proceedings, and there were pre-proceedings which involved [their child] which had been initiated by the Children’s Service”.
14. The three matters which remain in dispute and which the parties invite a ruling in accordance with Article 50 are as follows:

- (i) The extent to which the assault was motivated by the Defendant's belief that the Complainant may be pregnant.
15. The Complainant made a telephone call to the police shortly after 10pm on the day of the alleged incident in respect of which the Defendant was acquitted. During this telephone call, which was played to the jury and in respect of which they had a transcript before them, the Complainant said that she had a big bruise on her stomach "because he thought I was pregnant". In evidence (day 1 page 91) the Complainant said that the contents of the telephone call were true. In the summing up, the jury were told that this was part of the Complainant's evidence. Furthermore, she was cross-examined on a witness statement she made just after midnight that evening and with the agreement of both parties ultimately the statement was exhibited before the jury. Again, the statement formed part of the Complainant's evidence. What the Complainant said in that brief statement - the evidence of the police officer who took it was that she distressed at the time and concerned about her son - was referred to, particularly when she was cross-examined by defence counsel and in the summing up. In this witness statement her account in relation to Count 1 was: "I don't know where he got the idea from, but he accused me of being pregnant and he kicked me hard in the stomach 2 or 3 times because he wanted to get rid of the baby. I am not pregnant. He first kicked me in the kitchen and it forced me into the hallway, where he kicked me again. I have had 4 caesareans before and he was kicking me in the area of my scars. It was really painful. He was wearing shoes when he kicked me. After he kicked me he left the flat". When giving her evidence in chief, the Complainant did not refer to the Defendant being motivated by his belief that she may be pregnant (day 1 transcript, pages 57 and 58). However, later on in her evidence, she said that she thought she might have been pregnant but was not and had had a discussion with the Defendant regarding possible pregnancy and had discussed buying a pregnancy test with him. Furthermore, she told her IDVA (independent domestic violence adviser) on the day that she made her statement to the police that the Defendant had "tried kicking a baby out of my belly" and as I have said, confirmed that the call that she had made to the police was accurate to the jury. Further, when cross-examined, she stated that the statement she made to the police (the extract of which appears above) to the effect that the Defendant kicked her because he wanted to get rid of the baby was accurate. Bearing in mind the evidence heard and the location of the kicks which were specifically aimed at the Complainant's stomach - she was not kicked anywhere else - I am satisfied so that I am sure that the fact that the Defendant kicked the Complainant in the stomach was motivated in part by his belief that the Complainant may be pregnant. (ii) Whether the Complainant was on the floor or not when she was kicked.
16. The Complainant's evidence at trial, as indicated above, was that she was on the floor when she was kicked. In her short statement made just after midnight on 18th June 2021 to which I have referred above, she did not mention whether she was standing or not when she was kicked in the stomach by the Defendant. It was put to her in cross-examination that the first time she had mentioned being kicked whilst on the floor was during her evidence before the jury, and that this was different from her witness statement. The Complainant purported to

explain this by saying that her police statement was not detailed (this is correct, the statement exhibited was very short), that she was in hospital when the statement was taken – which she was. Furthermore, the independent evidence was that not only was the Complainant distressed and tired when her statement was taken, but the process of taking the statement had to be paused so that Dr Evans could examine the Complainant. Dr Evans also described the Complainant as “distressed”. When she gave evidence, the Complainant was consistent on this point, namely that she was on the ground when she was kicked, she said so in chief (day 1 page 57 and 58) and when she was cross-examined (day 1 page 102 and 111).

17. Having regard to the Complainant’s evidence overall and her consistency in respect of this and other circumstances of the case, I am satisfied so that I am sure that the Complainant was on the floor when she was kicked in the stomach by the Defendant. (iii) The language used during the assault
18. The Complainant said in evidence in chief (page 57, day 1) that the Defendant, whilst assaulting the Complainant, called her a “Junk smackhead”. “Junkie”. “Unfit Mum”. The defence say that the Complainant did not mention these words prior to the trial. Although the defence did not cross-examine the Complainant on the footing that these words were not used, it is noted that (page 57 of the transcript of day 1) the Complainant said that she could not remember word for word what was said and specifically “I just can’t remember what he was saying. It was just horrible, calling me names, horrible things”. In the circumstances, and bearing in mind the nature of the assault, which must have been very frightening for the Complainant, I am not satisfied so that I am sure that these words were used and suggest that the Crown settle on notifying the Jurats in the summary of facts that the Defendant used abusive language when assaulting the Complainant as I am satisfied that he did.
19. Finally, the defence written submissions invited me to have regard to evidence which was not before the jury in the form of, inter alia, additional witness statements of the Complainant. It is not appropriate for me to have regard to such matters when considering whether or not I am satisfied as to the matters in dispute. I should only have regard to the evidence which was before the jury which included admissions, a witness statement and other material (such as the text exchanges). The defence also invited me to have regard to the Crown’s opening, counsel’s closing speeches and my summing up as part of the evidence in the case. Such matters are not evidence. Although I have referred to the Crown’s opening in relation to certain aspects of the case, I have only done so on the footing that the particular extracts to which I have referred were supported by evidence subsequently given. Further, notwithstanding the fact that it is not evidence it may be appropriate to consider the summing up, particularly the directions given to the jury on the law, in order to identify the proper interpretation of the jury’s verdict for the purposes of sentence when considering the Court’s determination under Article 50. Authorities AG v Baksa [2022] JRC 098. AG-v-Williams [2022] JRC 103.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2022%5DJRC109.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/the-attorney-general-v-roger-james-baksa-2022>

Prepared on 22 October 2026 · Esheria