

JERSEY / JUDGMENT

The Attorney General v T

COURT
ROYAL COURT

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[2010]JRC222
ROYAL COURT
(Samedi Division)
10th December 2010

Before : Sir Philip Bailhache, Kt., Commissioner and
Jurats Le Cornu and Fisher.
The Attorney General
-v-
T
Sentencing by the Inferior
Number of the Royal Court,

following a guilty plea to
the following charge: 1 count of:
Causing harm to a child under 16 years,
contrary to Article 35(1) of the Children (Jersey)
Law 2002 (Count 1).
Age: 22.
Plea: Guilty.

Details of Offence: The defendant is the father of a
baby girl, who was aged 6½ weeks at the time of the incident. On 18th August, 2010,
the baby woke in
the night to feed and whilst the mother was downstairs preparing a bottle she
heard the baby scream. The
defendant then appeared with the child and said that she would not settle. The
mother began to feed the baby and
noticed that one of her legs was not moving. She tried to comfort her, but realised
that something was definitely wrong with her leg. The defendant told her that he
may have
caught the baby's leg as he removed her from the cot. An ambulance was called and
the
paramedics examined the baby. They
could feel the bones of her leg grating together and her right leg appeared
shorter than her left.
The baby was taken to hospital,
accompanied by the defendant. On
arrival her pain was rated as 10/10 by the triage nurse. She was examined by the
paediatrician

and found to have a broken femur.
The baby was placed in traction, on her back with her legs suspended in the air for 22 days. She remained on Robin Ward until 27th September, 2010, and whilst in hospital was treated with diazepam, oral morphine and paracetamol for pain.
Though the precise mechanism of the injury was unknown, the baby's right femur was broken in such a way that the consultant paediatrician stated the fracture would have occurred as the result of considerable force in a twisting or rotating movement. He further stated that the fracture was clearly indicative of non-accidental injury. Despite this medical opinion, the defendant maintained in interview that the baby's leg had become caught in the cot as he lifted her. The defendant pleaded guilty on the basis of recklessness. The defendant is assessed as at medium risk of re-offending and at significant risk of causing harm to children until he has undertaken counselling.

Details of Mitigation:	Guilty plea; the defendant appreciated the seriousness of the offence and was remorseful. He maintained that the injury was caused recklessly and had not intentionally or spitefully; called the ambulance and went to hospital with the baby.
Previous Convictions:	Three offences of child neglect.
Conclusions:	The Crown submitted that guidance could be taken from Harrison-v-AG [2004] JLR 111.
Count 1:	2 years' imprisonment.
Sentence and Observations of Court:	The offence was indistinguishable from a grave and criminal assault and would be sentenced on that basis. Although it was a reckless act it caused severe injuries.
Count 1:	18 months' imprisonment. C. M. M. Yates, Esq., Crown Advocate. Advocate J. W. R. Bell for the Defendant.

JUDGMENT

THE commissioner: 1. This defendant has pleaded guilty to one count of recklessly causing harm to his daughter, then aged seven weeks. The defendant has not disclosed exactly what he did but the evidence of the consultant paediatrician was that there had been a fracture of the right femur. It occurred as a result of significant force applied to the bone. It may have been by direct pressure applied to the leg in a twisting or rotating movement. 2. Given that the Crown has accepted that the injury was not intentionally inflicted, we infer that one possibility is that the defendant lifted the baby out of the cot by her leg, in the process causing the body to twist or

rotate violently around it in the manner described by the paediatrician, but however the fracture happened, for all practical purposes this offence is indistinguishable from a grave and criminal assault and we are sentencing on that basis. This was a reckless act that caused severe injuries to a small child. 3. The Crown Advocate has rightly referred us to the case of Harrison-v-AG [2004] JLR 111 and we have looked at all the factors listed in that guideline case. This was an offence on the spur of the moment and not premeditated. It involved the application of significant force upon a helpless infant; it happened in the middle of the night after he had been awoken by the baby's crying and we infer that there was a loss of self control which led the defendant to behave in this way. Crying does not, of course, amount to provocation; the pain caused to the infant was considerable. 4. In mitigation the defendant has pleaded guilty to the Indictment; he did call the ambulance to the house soon after the injury had been incurred; he was a young man of 21 when the offence was committed; he has a very deprived background. We have considered the suggestion by his counsel that a non-custodial sentence should be imposed but we have concluded that the causing of injuries of this kind to a small baby is far too serious for that. In principle the conclusions are right but we are going to reduce them slightly because of the remorse which the defendant has expressed and the efforts that he has made in prison to understand what went wrong and to improve his ability to cope with his emotions so that nothing of this kind will ever happen again. He has been working with the substance misuse counsellor and we hope that that will continue. 5. What you did was very, very wrong and we hope that you understand how it was wrong. We hope that you will take advantage of all the courses that are available to you in the prison. We are going to sentence you for the offence that you have committed to 18 months' imprisonment. Authorities Harrison-v-AG [2004] JLR 111. AG-v-Mallet 1991/44. AG-v-Taylor 1998/48. AG-v-Houiellebecq [2003] JRC 046.

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