

ROYAL COURT  
(Samedi Division)

18th March, 1996

52.

Before: The Deputy Bailiff, and Jurats  
Le Ruez and Vibert.

POLICE COURT APPEAL (The Relief Magistrate)

Miguel Vitorino Freitas Veloso

- v -

The Attorney General

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Appeal against a total sentence of 9 days' imprisonment passed on 22nd December, 1995, in the Magistrate's Court by the Relief Magistrate, following a guilty plea to:

- 1 count of causing a breach of the peace by fighting (count 1) on which count a sentence of 9 DAYS' IMPRISONMENT was imposed; and
- 1 count of violently resisting police officers in the due execution of their duty (count 2), on which count a sentence of 9 DAYS' IMPRISONMENT, CONCURRENT, was imposed.

Appeal allowed, sentence quashed; fine of £200 on each count substituted (total: £400), to be paid at rate of £30 per week or 9 days' imprisonment in default of payment.

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Advocate H. Tibbo for the Appellant.  
Advocate P. Matthews on behalf of  
the Attorney General.

JUDGMENT

THE DEPUTY BAILIFF: This is an appeal against a sentence of nine days' imprisonment imposed concurrently for two offences, the first of causing a breach of the peace by fighting and the second of violently resisting police officers in the execution of their duty.

The offences are easily dealt with. Apparently the police officers were outside the "Les Folies d'Amour" nightclub on the Esplanade in the early hours of the morning, a large crowd coming from the night spot had congregated on the footpath. A fight developed between a group which consisted largely of Portuguese males. The officers ran into the crowd and because of the sheer numbers and because there were pockets of fighting in different areas the officers became separated. An officer restrained one male, the appellant, who was continually swinging punches at another. At no time did the officer see the other male person return a punch.

The officer took hold of the appellant and told him he was under arrest for causing a breach of the peace by fighting. He began to caution him when the appellant again went for the other male. The officer, having hold of both males, had to forcibly restrain the accused by pushing him against the door of the premises next to the nightclub. Because of the continuous struggling of the appellant, the officer had to let go of the other male and concentrate his efforts on the appellant, who, at this stage, was resisting the police officer and attempting to get away from him.

Eventually further units arrived; the appellant was forcibly led away to a waiting police van for his own safety and to prevent any further incidents. For the safety of the police officers, he was handcuffed. When in the police van an officer repeated the caution, and the accused replied "I don't give a shit." He apparently showed little remorse and added "If they hit my brother, I hit them." From that point, the accused treated the incident in a very light-hearted fashion.

At no time - and this must be stressed - during the fight or thereafter were any police officers injured. Because of the size of the crowd no other offenders were detained. The appellant was detained in the cells and prior to his detention he apologised to the officers for his behaviour.

The appellant today appeals against the sentence of imprisonment. The first ground of appeal put forward by Miss Tibbo is that the appellant was not legally represented. We must say at once that there is nothing in that ground at all. The appellant is 27 years old; he has been in Courts of Law before and he holds a responsible position.

As was said in Curtis -v- A.G. (14th August, 1989) Jersey Unreported:

*"It is not a rule that in cases of this nature, with a man of 31 with a record that the Magistrate is required to invite him to have legal advice and representation. It is not a rule of law and we are not proposing to*

been prepared and Da Rosa was facing his first custodial sentence. Da Rosa, of course, had previous convictions for dishonesty and an earlier conviction for driving whilst uninsured.

5 Another ground of appeal follows the question of the personal circumstances of the accused, but we do not feel that these are matters which we are in any way bound to take into account. The Superior Number said so in the case of A.G. -v- Duffy (9th August, 1993), in words which we cannot improve upon. The Court said:

10 *"....it is not a mitigating factor that hardship will result on an accused person's family because of that person's activities, or, as in Sambor's case, on a girlfriend. The Court in Sambor said: ...."it is not a matter to be taken into account by a sentencing Court".*  
15 *The Court also added: "it is a matter which Sambor should have reflected upon before he embarked on his offences".*

20 It does appear, from what we have been told, that the appellant may lose his employment as a result of his offences, but that, as we have said, is not the point.

25 What seems to us important is that the Relief Magistrate might have asked the accused whether he wished to ask the Centenier any questions. He did not actually do so; he allowed the Centenier to present his report; he then looked at the record and then said "do you want to say anything?" The Relief Magistrate might also have told the appellant before imposing the sentence - which came very quickly after the Centenier's report -  
30 that he was thinking of imposing a prison sentence and asked for any mitigating circumstances to be put to him.

35 Those two points, as I have said, trouble us although we will say this: in our view the sentence was perfectly correct. The expressions of the Magistrate that the police have got to be protected in their difficult task of handling public order in the streets of St. Helier was very apposite. The fact that the sentencing court might have made these prison sentences consecutive rather than concurrent is very clear to us and for the  
40 offences that were committed it is not a heavy sentence. However, what we feel is unacceptable about the case that we have heard this morning - and which has disturbed us - is that the Magistrate might well have asked a man who was not represented whether he wished to question the Centenier and if he had answered that question in the negative, there would have been no ground of  
45 appeal; if the Magistrate had gone on to say that he was thinking of imposing a prison sentence and asked the appellant whether he had anything to say and the appellant had said what Miss Tibbo has said to us today and he had still decided to impose a prison  
50 sentence, again, that would have presented us with no difficulty. But he did not do either of those things and in our view justice

must not only be done - as it was done in this case - but it must be seen to be done.

- 5 In the particular circumstances of this unusual case we are going to substitute the 9 days' imprisonment with a fine of £400, £200 on each count consecutive, making a total of £400. You will pay this fine at the rate of £30 per week, or, alternatively, 9 days' imprisonment in default of payment. Miss Tibbo, you shall have your legal aid costs.

### Authorities

- Shannon -v- A.G. (15th April, 1985) Jersey Unreported.
- Curtis -v- A.G. (14th August, 1989) Jersey Unreported.
- Dawson -v- A.G. (5th March, 1990) Jersey Unreported; (1990) JLR N.15.
- Wickenhauser -v- A.G. (23rd October, 1987) Jersey Unreported; (1987-88) JLR N.20.
- Rogers -v- A.G. (13th November, 1989) Jersey Unreported.
- Ramsey -v- A.G. (17th September, 1991) Jersey Unreported.
- Rowland -v- A.G. (22nd April, 1992) Jersey Unreported; (1992) JLR N.11.
- Da Rosa -v- A.G. (23rd May, 1988) Jersey Unreported.
- Lelliott -v- A.G. (29th November, 1989); (1989) JLR N.13.
- A.G. -v- O'Shea (11th January, 1991) Jersey Unreported.
- A.G. -v- Duffy & Ors. (9th August, 1993) Jersey Unreported.
- Oliver -v- A.G. (25th July, 1994) Jersey Unreported.
- Corbett -v- A.G. (21st February, 1994) Jersey Unreported.
- Mandel -v- A.G. (4th July, 1989) Jersey Unreported CofA; (1989) JLR N.11.
- Hughes -v- A.G. (17th June, 1987) Jersey Unreported CofA; (1987-88) JLR N.20.
- Dowden -v- A.G. (22nd July, 1991) Jersey Unreported.