

ROYAL COURT
(Samedi Division) 129.

12th July, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and Jurats
Le Ruez and Quérée

The Attorney General

- v -

Michael Leigh Ashford.
Mark André Such.

Michael Leigh Ashford

- 1 count of conduct likely to cause a breach of the peace (count 1).
- 1 count of grave and criminal assault (count 2).
- 1 count of possession of an offensive weapon in a public place, contrary to Article 27(1) of the Firearms (Jersey) Law, 1956 (count 3).

Plea: Guilty.

Age: 23.

Details of Offences:

Ashford in the company of Mark André Such and Stephen James Hendry attended upon premises at Holmfield Avenue, St. Brelade, where the offences took place. They related to attempting to recover a debt allegedly due to Such from Odian Marc Samson and the assault was committed against his father. Although the prosecution could not assert positively that this was the case it was possible that the debt was drug related. Ashford wielded a cut-down hockey stick. No injuries were caused.

Details of Mitigation:

Ashford was not aware of why debt was owed. Misplaced loyalty and support for a friend. There was not any physical contact between Ashford and the victim. Ashford was severely intoxicated on both alcohol and a cocktail of drugs. Age not yet exhausted the credit he deserves.

Previous Convictions:

Substantial number of convictions between February, 1992, and November, 1995, for a range of offences including larcenies, possession of drugs and at least three previous offences of grave and criminal assault and other offences of violence. The latest offences were in November, 1995, and included a grave and criminal assault, common assault, breaking and entering and larceny - total sentence 6 months' imprisonment.

Conclusions:

Count 1 : 3 months' imprisonment.
Count 2 : 18 months' imprisonment, concurrent.
Count 3 : 6 months' imprisonment, concurrent.

Sentence and Observations of the Court:

Count 1 : 3 months' imprisonment.
Count 2 : 15 months' imprisonment, concurrent.
Count 3 : 6 months' imprisonment, concurrent.

Court accepted that band of 18 months - 3 years was correct starting point for grave and criminal assault. Jurats were split on their views in relation to count 2 and therefore the Deputy Bailiff sided with the more lenient approach. Prosecution conclusions on counts 1 and 3 were accepted.

Mark André Such.

1 count of conduct likely to cause a breach of the peace (count 1).
1 count of assault (count 4).

Plea: Guilty.

Age: 21.

Details of Offences:

Such in the company of Michael Leigh Ashford and Stephen James Hendry attended upon premises at Holmfield Avenue, St. Brelade, where the offences took place. They related to attempting to recover a debt allegedly due to Such from Odian Mark Samson and the assault was committed against his father. Although the prosecution could not assert positively that this was the case it was possible that the debt was drug related. Ashford wielded a cut-down hockey stick. No injuries were caused. Such also pushed the victim and attempted to force his way into the property.

Details of Mitigation:

Pleaded guilty in January and maintained plea ever since. Only just turned 21. Considerable delay and has been in custody. Regretted his actions which were due to a cocktail of alcohol and drugs. Such and the son of the victim were old friends and had known each other many years. Not intended to commit violence. Nothing to do with drugs and at no time did he threaten victim or his property.

Previous Convictions:

Two for possession of cannabis in October, 1991, and April, 1992. (Probation for first and two weeks' imprisonment for second). Possession of cannabis and lysergide with intent 1st December, 1992, (6 months' imprisonment). Drove a car over the limit and consumed alcohol under age 11th June, 1993. Supplying and possessing with intent to supply LSD 16th April, 1994. 2½ years' imprisonment sentence for last conviction.

Conclusions:

Count 1 : 3 months' imprisonment.
Count 4 : 9 months' imprisonment, concurrent.

Sentence and Observations of the Court:

Conclusions granted. The correct band was twelve months for the assault charge. See also Ashford.

[Stephen James Hendry, a co-accused, also pleaded guilty to count 1 and was remanded in custody to another date].

J.G.P. Wheeler, Esq., Crown Advocate.
Advocate J.C. Gollop for M.L. Ashford.
Advocate Mrs. S.A. Pearmain for M.A. Such.

JUDGMENT

5 THE DEPUTY BAILIFF: In the late afternoon of Sunday, 14th January, 1996, these two accused, with a group of others, came to the house of the Samson family in St. Brelade. They were, apparently, looking for the son of Mr. Samson to recover a debt of £700. Mr. Samson senior answered the door. He was put into some fear for his safety as the men tried to gain access to the house. Remarks were made to Mr. Samson, which are not disputed by counsel, such as: *"this is very serious, your son won't be able to walk the street with two broken legs"*. Ashford was holding a 4 x 2 piece of wood - a cut-down hockey stick - about 2 ft. long and covered in tape. Having tried to enter the property, he tried at one point apparently unsuccessfully, to strike Mr. Samson with this piece of wood.

15 The police were called and before they arrived, after further threats, the group left together in two cars. We say 'the group' because not only were there three men at the doorway of the Samsons' house but four or five of their associates standing some 20 ft. away. We were told, by Mrs. Pearmain, that they were there quite innocently but of course Mr. Samson was not to know that. 20 Of the fact that they were there quite innocently we have some doubt. It was clearly a very frightening episode.

25 A short time later, when police officers were in the house, further threats were made on the telephone, again referring to the breaking of legs. The call was traced as having come from Hendry's address at St. Peter's Arsenal. When the police arrived there they noticed the two cars described by Mr. Samson parked outside and one of those cars drove away. Later, when Such and 30 Ashford had been arrested, the broken hockey stick - for such it was - used in this assault was seen lying flat against the wall. The two men were arrested and taken with another person to Police Headquarters.

35 On the question of the charge of grave and criminal assault I refer to the case of Vaughan (November, 1974) cited in Whelan's "Aspects of Sentencing in the Superior Courts of Jersey" at p.85:

40 *"....it is immaterial that no injury in fact results because perhaps the victim has managed to avoid being struck, either partly or completely"*.

Looking at the authorities, we are content that the effective starting point is within the range of eighteen months to three years' imprisonment. In fact we note that in Gibaut (5th June, 1986) Jersey Unreported where the victims were put in fear of their lives by the accused who had a variety of knives with him but suffered no injury the sentence there was four years.

On the charge of common assault again we are satisfied that the starting point has to be around twelve months.

During his address Mr. Gollop made an interesting remark about his client, he said "*he knew what he was coming for; he knew the likely consequences that would follow*". Certainly Ashford had taken a cocktail of alcohol and drugs; he has pleaded guilty; he is 23 years of age and while he has a record in connection with violence and it is a bad record in general the only sentence of imprisonment that he has suffered for violence in the past is that of one month.

Where this case and the case of Such differs from that of A.G. -v- Bardwell (24th April, 1996) Jersey Unreported is that, sadly, we have no evidence before us at all that Mr. Samson has suffered any trauma. We are told that he was terrified, we can well understand that; but there are no reports before us as to the effect that these assaults have had on him or on any member of his family. Again, we grew more concerned as Mrs. Pearmain was addressing us as to whether this debt was connected with drugs or not and in fact we came very close to ordering a 'Newton' hearing. However we are concerned that it is four months since the transcripts were signed and that Such has been in custody for some six months, no doubt because of his associates and the problems that the police have faced on this matter. We cannot regard these offences as relatively minor and we are certainly not minded to grant any conclusions based on community service. It is indeed unfortunate that Such has just passed his 21st birthday as before that time he would have had to be sentenced - if he had come before us - in accordance with the Young Offenders Law, although we have little doubt that the offence would have merited a term of imprisonment.

As described to us, these were serious offences of an unpleasant nature. At very short notice we have also seen some reports on Ashford which might, perhaps, show some hope in the very unfortunate life that he has led to date.

Taking into account the records of the two accused, their ages and what has been said about them in the Probation Reports, it may be that the starting point for Ashford is too high. We have to stress that in the absence of better evidence we are in some doubt in this matter. The prosecution began by convincing us that this was without doubt a debt concerning heroin. If that was

the case, then all that had happened since that initial statement was made is that the issue has been, as far as we are concerned, clouded and we remain dissatisfied as to what in fact this affair was all about. Nevertheless, in any terms, this was a very unpleasant and a very terrifying experience both for Mr. Samson and for all his family.

Will you stand up, please. Ashford, the Jurats are not in agreement with the conclusions of the Crown Advocate and therefore I must follow the conclusions of the Jurat who is most inclined towards you. Therefore on that basis, on count 1, you are sentenced to 3 months' imprisonment; on count 2, you are sentenced to 15 months' imprisonment; on count 3, you are sentenced to 6 months' imprisonment, concurrent.

Such, we have no hesitation in saying that we will follow the recommendations of the Crown Advocate in your sentence. On count 1, you are sentenced to 3 months' imprisonment; on count 4, you are sentenced to 9 months' imprisonment, concurrent. We order the forfeiture and destruction of the weapon.

Authorities

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp: 84-95.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
Noter up May, 1995 - May, 1996: p.27.

A.G. -v- Bardwell (24th April, 1996) Jersey Unreported.

A.G. -v- Gibaut (5th June, 1986) Jersey Unreported.