

ROYAL COURT
(Samedi Division)

245

12th December, 1994

Before: The Bailiff, assisted by Jurats
Coutanche, Orchard, Hamon, Gruchy, Vibert,
Herbert, Rumfitt and Potter

The Attorney General

-v-

Kenneth Charles Skinner
Paul Adam Skinner

"Newton" hearing and sentencing before the Superior Number to which the accused were remanded by the Inferior Number on 23rd November, 1994, after guilty pleas had been entered to the following counts:

Kenneth Charles Skinner

Age: 24

Paul Adam Skinner

Age: 26

PLEA:

Guilty (following "Newton" trial on three issues).

Kenneth Charles Skinner and Paul Adam Skinner

1 count of grave and criminal assault (count 1 of the indictment)

Kenneth Charles Skinner

2 counts of assault (counts 2 & 3);

1 count of violently resisting police officers in the execution of their duty (count 4);

1 count of malicious damage (count 5).

Paul Adam Skinner

1 count of assault (count 6)

1 count of violently resisting police officers in the execution of their duty (count 7)

DETAILS OF OFFENCE:

Engaged couple arguing on walking home from a nightclub. Accused offered assistance to female. Couple told accused that their attentions were unnecessary. Accused drove off some distance in a taxi, paid off the taxi and waited for the couple. Both accused set upon the male, punching and kicking him. Victim put up resistance. K.C. Skinner procured a scaffold pole and struck the victim with it. Victim fell to ground and K.C. Skinner struck at him a number of times with the pole. Evidence of a total of at least

two blows connecting during the incident, one of which fractured a rib. P.A. Sinner delivered kicks to the victim while the latter was on the ground. K.C. Skinner punched the female and P.A. Skinner shoved her. In an unrelated incident minutes later K.C. Sinner confronted a stranger and punched him in the head. Both accused violently resisted arrest. K.C. Skinner set fire to a mattress at Police Headquarters.

DETAILS OF MITIGATION:

K.C. Skinner:

Little of significance;

P.A. Skinner:

Lesser involvement; good character; family man; unlikely to reoffend.

PREVIOUS CONVICTIONS:

K.C. Skinner: 1 x wounding with intent
 1 x assault on police

P.A. Skinner: Disorderly on licensed premises; no violence.

CONCLUSIONS:

Kenneth Charles Skinner

count 1 : 3½ years' imprisonment
count 2 : 6 months' imprisonment, concurrent
count 3 : 2 months' imprisonment, consecutive
count 4 : 4 months' imprisonment, consecutive
count 5 : 1 month's imprisonment, concurrent

TOTAL : 4 Years' imprisonment

Paul Adam Skinner

count 1 : 1 year, 9 months' imprisonment
count 6 : 2 months' imprisonment, concurrent
count 7 : 3 months' imprisonment, consecutive

TOTAL : 2 years' imprisonment

SENTENCE:

Kenneth Charles Skinner

Conclusions granted

Paul Adam Skinner

Counts 1,6,7: 2 years' probation with 240 hours community service, concurrent.

C.E.Whelan, Esq., Crown Advocate
Advocate P.C. Sinel for both accused

JUDGMENT
(Decision after 'Newton Hearing')

THE BAILIFF: This 'Newton' hearing concerns three matters which the Court, that is to say the Jurats, have to determine as matters of fact.

5 First, how did the scaffold pole - and there is no dispute that a scaffold pole was used in the fracas - arrive at the scene? Secondly, the degree of argument and/or violence, between Mr. Hooson and Miss Rice, at the entrance to or in the tunnel? And thirdly, the degree of violence as to the actual assault itself.

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The Jurats are unanimous in their decision and find as follows:

15 So far as the entrance to the tunnel is concerned - and it is proper to take events in their chronological sequence - they accept the version of Mr. Hooson and Miss Rice. They are satisfied that no violence was exhibited by Mr. Hooson to Miss Rice. They have taken into account the evidence of the taxi driver as to this matter but they find that a signal of some sort, by fingers or finger, was made by Mr. Hooson whilst the two
20 Skinners in their taxi were driving down the tunnel. Secondly, the Court finds that the scaffold pole was not brought to the scene by Miss Rice. Paul Skinner himself in his cross-examination said that it was not Miss Rice; he himself did not
25 bring it; the logical conclusion must be that it was brought by Kenneth Skinner. Thirdly, the Court accepts the evidence of the McKenzie's from their flat; and the Court is satisfied that at least two blows with the scaffold pole, wielded by Kenneth Skinner, connected with the body of Mr. Hooson and of course there
30 were a number of kicks of considerable intensity by both the accused. The Court notes, having seen and examined the scaffold pole, that it is not easy to control it; it is a heavy one, which makes it even less likely that Miss Rice would have carried it to the scene and would then have been able to wield it effectively;
35 but we have no direct evidence on that particular point - she was not asked to examine it or hold it. Therefore the finding of the Court, which I have summarised, is that the version of the events which the Crown put forward at this 'Newton' hearing is what took place and is the proper sequence of events on that night.

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Kenneth Skinner, the Court accepts the submissions of your Counsel, as in the case of your brother, that you did not set out that night to commit offences. Nevertheless, what you did was vicious and cowardly. You used an offensive weapon of great
45 potential danger and attacked an unarmed person, striking him with at least one blow, possibly two. The Court is satisfied from the evidence of independent witnesses, Mr. and Mrs. McKenzie, that it was a savage and sustained attack and Mr. Hooson was fortunate to have escaped with the injuries he did.

JUDGMENT
(Sentencing).

5 The Court has said on many occasions that persons who commit
attacks of this nature will receive substantial custodial
sentences. We have looked at the corresponding sentences imposed
by this Court but no case is on all fours with yours. The Court
is satisfied, as you heard, at the conclusion of the 'Newton'
10 hearing that it was you who brought the scaffold pole and without
your doing that, the fracas would, perhaps, not have escalated in
the way it did. Be that as it may, the Court cannot find other
than that you must go to prison for a substantial period, nor can
the Court find the conclusions of the Crown are excessive and
15 accordingly the conclusions as asked for by the Crown are granted
and you are sentenced as follows:

Counts 1, 3 1/2 years imprisonment; on count 2, 6 month's
concurrent; on count 3, 2 month's consecutive; on count 4, 4
20 month's consecutive; on count 5, 1 month concurrent; making a
total of 4 years imprisonment.

When we come to you, Paul Skinner, there are some different
conclusions to take into account. The Court accepts that
25 violence of this nature is not in your character and that you were
to some extent, as your Counsel said, led on and led astray by
your brother. That does not mean to say that the Court is
condoning what you did; the Court is satisfied that whilst your
brother was wielding the scaffold pole you kicked a defenceless
30 man on the ground. It is true that he had endeavoured to defend
himself; it is also true that you had received some minor injuries
at some stage of the fracas. But the fact remains that you were
prepared to "put the boot in" to a man on the ground who was being
assaulted by your brother; that is not behaviour which this Court
is prepared to put up with. Nevertheless, because of the matters
35 set out in the probation report, and the belief of this Court that
imposing the sentence we are going to impose on you will mean that
it is unlikely that you will re-offend, we not going to impose a
custodial sentence. We are going to place you on probation on
count 1 for two years and order you to carry out 240 hours, the
40 maximum, community service to mark the displeasure of the Court at
your behaviour. Count 2 you will be put on probation for two
years, concurrent; count 3, 2 years probation, concurrent. And,
of course a probation order carries with it three requirements -
that you live and work as directed by your probation officer, that
45 you will be of good behaviour during the period of probation and
that you will come up for sentence, if necessary, if you break
your probation.

50 The order for the community service is to be completed within
twelve months.

Authorities
(sentencing)

A.G. -v- Norris (3rd June, 1992) Jersey Unreported.

Whelan "Aspects of Sentencing in the Superior Courts of Jersey" pp.91-94.

A.G. -v- de Freitas & Ors. (4th August, 1994) Jersey Unreported.

Stevens (1986) 8 Cr. App. R. (s) 297.

Jauncey (1986) 8 Cr. App. R. (s) 401.

Thomas: "Principles of Sentencing" (2nd Ed'n): pp.52-57

A.G.-v-Welsh, O'Brien (25th February, 1993) Jersey Unreported.